MARINE DEPARTMENT.

PRÉCIS

OF

CORRESPONDENCE REGARDING THE

BILL TO AMEND THE

BOMBAY PORT TRUST ACT,

1879.

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I.

Bill to amend the Bombay Port Trust Act, 1879.

Sections 1, 2, 10 *and* 11. *Amendment of Sections* 21 *and* 22 *of the Act regarding the grant of pensions, gratuities or compassionate allowances to officers, &c., of the Trust, who may be injured, or to the surviving relatives of such as may be killed, in the execution of their duty.*

The necessity for this amendment is explained in clause (1) of the Statement of Objects and Reasons.

II.

Sections 3 *and* 4. *Relative to the rights vested in the Board in respect of certain properties, and the ownership of Government over fish-ponds on lands belonging to Her Majesty.*

By Government Resolution, Revenue Department, No. 875, dated 4th February 1889, Government handed over to the Port Trustees, Bombay, all the fish-ponds in Back Bay, with the exception of one held on a pension and tax tenure.

In 1890 certain persons, who had rented the fish-ponds from Government, having refused to recognize the Trustees' rights over the ponds, the Port Trustees filed a suit in the High Court for the ejectment of the fish-pond holders, who, the Trustees urged, had no more than a yearly interest terminable at any time after notice by Government and now by the Port Trust, since Government had transferred to the Trust the management and proceeds of the ponds. In his judgment, Mr. Justice Parsons held that as the Trustees had proved that Government had handed the fish-ponds to them, all the interest of Government in the fish-ponds was vested in the Port Trustees. This finding was independent of the transfer of shingle, gravel and soil interests by Section 28 of Act VI of 1879. With regard to that section Mr. Justice Parsons held that the latter part of it did not vest in the Trustees anything more than the first part of it, and that even if the latter part of the section did vest anything more, there was no definition of the Port limits under either of the Port Trust Acts, 1873 or 1879.

2. The Port Trustees thereupon took the opinion of Counsel (Mr. Lang), who

stated* that the latter part of Section 28 of the Port Trust Act, 1879, had not the effect of vesting in the Trustees land not included in the earlier portion of that section, and he advised

(1) that Government should either execute to the Trustees conveyances of all those pieces of land, including fish-ponds, &c., which it was intended to vest in the Trustees, but which were not included in the property vested by the Bombay Port Trust Act, 1873 (Section 8)

or

(2) that a short Act should be introduced declaring that all those pieces of land, &c., are vested in the Port Trustees,

and

(3) that Government should define the limits of the Port for the purposes of the Port Trust Act.

* Accompaniment to Trustees' Letter No. 3327, dated 18th August 1890.

3. The Port Trustees having requested† Government to take action in view to giving effect to the opinion of their Counsel, a reference was made to the Collector of Bombay on the subject. Mr. Monteath, the Collector, referred to a letter he had written on the subject of the proposed reclamation at Colába in which he had expressed an opinion as to the effect of Section 28, clause 2 of Bombay Act VI of 1879, which was in accordance with that of the Counsel for the Port Trustees and the decision of the Honourable Mr. Parsons. Mr. Monteath stated that he did not concur in the view apparently taken by the Port Trustees that it was the intention of Section 28, clause 2 of the Port Trust Act of 1879 to vest in the Port Trustees the whole area below high water mark within the limits of the Port, but that this intention was defeated by defective wording, and that only a confirmation of their title was necessary. He pointed out that the limits of the Port for the purpose of the Indian Ports Act included Back Bay and large areas of mud swamps in the north of the Alibág Táluka, in the vicinity of Elephanta, Hog Island, Trombay and elsewhere, and he thought it improbable that it was the intention of the legislature to vest all these easily reclaimable areas in the Port Trustees. Mr. Monteath, therefore, presumed that Government would not pass an Act for the purpose of giving the Trustees a permanent proprietary right in all the area within the limits of the Port, and he was therefore averse to the transfer by conveyance of the fish-ponds to the Trustees.

† Letter No. 3397, dated 18th August 1890.

4. The Honourable the Advocate General (Mr. Latham) was then consulted as to the effect of Section 28, clause 2, of the Bombay Port Trust Act, 1879. His opinion* is as follows:—

*No. 109, dated 17th November 1890.

"The clause is peculiarly worded. Ordinarily speaking its words would convey an absolute interest in immoveable property within the limits described; but having regard to the contrast between the two clauses of Section 28 and the improbability of the limits of such absolute property being made variable at the pleasure of Government, I do not think that such an effect ought to be attributed to them here. What their true meaning may be is hard to say, nor do the Proceedings of the Legislative Council throw any light on the matter; but I am disposed to think that the intention was to give a right of dredging within Port limits and of disposing of the substances dredged or otherwise removed. If it be correct, as stated, that no notification has been issued by Government defining the limits of the Port of Bombay for the purposes of the Port Trust Acts either of 1873 or 1879 there is not as yet any defined area within which the clause can operate.

"What course the Government ought now to pursue, though a question raised in the papers sent to me, is a question of policy rather than of law, and on which I do not think it proper to express an opinion, though the arguments of the Collector appear to have much weight. But with regard to the property made over to the Port Trustees under the Resolution of February 4th, 1889, and in obtaining possession of which the Trustees have had to undertake litigation and incur costs, I think it would be inequitable for Government to resume such property from the Trustees without first repaying them their outlay in respect thereof. It seems desirable that a notification should be issued defining the limits of the Port for the purposes of the Port Trust Act."

5. Government thereupon issued the following Resolution† :—

†No. 48, dated 18th February 1891.

RESOLUTION.—The Port Trustees should be informed that the orders contained in Government Resolution, Revenue Department, No. 875, dated 4th February 1889, were issued under a misapprehension. The limits of the Port are as they may be defined by Government from time to time (Section 5, Indian Ports Act, 1889) and under Section 28, clause 2, Bombay Port Trust Act, 1879, only "the estate, right, title and interest of the Secretary of State in Council in the rock, stones, shingle, gravel, sand or soil" within those limits has been made the property of the Port Trustees. His Excellency the Governor in Council therefore considers that the Trustees have no right to the fish-ponds in question, which

were made over to them by mistake, and that they should give them up on being recouped the expenses incurred in defending the suits brought against them in respect of these fish-ponds. The expenditure incurred on this account should be reported to Government.

2. When the Bombay Port Trust Act, 1879, is amended, the question of defining the limits of the Port for the purposes of that Act will be considered.

A copy of the Minute by the Honourable Sir R. West, on which the foregoing Resolution is based, is attached, *vide* Appendix A.

6. With reference to the above decision, a letter* was received from the Secretary, Bombay Port Trust, in April 1891, asking Government to re-consider the subject, and to allow the Back Bay fish-ponds to remain vested in the Port Trustees, the grounds for this application being that the fish-pond enclosures are made of stone and shingle, the interest in which vests in the Port Trust under Section 28, clause 2, of the Port Trust Act, 1879, and that if the management and profits from the ponds be taken from the Trustees, the Trust will be prevented from exercising their rights over the stone, shingle and soil in the pond enclosures.

* No. 1440, dated 11th April 1891.

7. This letter from the Port Trust having been referred to the Collector of Bombay (Mr. J. M. Campbell), that officer submitted† a clear and exhaustive report on the bearings of the whole question. This report forms Appendix B to this note. Mr. Campbell, it will be seen, held that the transfer of the fish-ponds to the Port Trust carried with it no proprietary right to the land included within fish-pond limits, and that the history of the framing of Section 28 of the Port Trust Act, 1879, clearly indicated that the proprietary right to the foreshore and harbour bottom rested with Government. The Collector, in the last paragraph of his report, summarized his proposals as follows :—

† Collector's No. L. R.-1361, dated 11th July 1891.

"(*a*). Government to re-affirm their proprietary right in, and their full control over, lands under high tide level within Harbour limits except the portions of the foreshore vested in the Port Trust under Acts I of 1873 and VI of 1879, and any further portions of the foreshore which Government may see fit to vest in the Trust.

"(*b*). The notification fixing Harbour limits under the Indian Ports Act to be republished.

"(*c*). On condition that such enjoyment carries with it no proprietary right in the land,

Government to express their willingness to continue the existing cession to the Trust of the management and rental of all public fish-ponds within Harbour limits.

"(*d*). As regards compensation, that the proposed concession of portions of the east foreshore be considered a set-off against any claim of the Trust for loss of shingle or fish-pond revenue which may arise from any future foreshore reclamation."

8. The papers having been submitted to the Honourable Board, the following minute was recorded by the Honourable Sir R. West, dated 28th August 1891, and concurred in by His Excellency the Governor:—

"Mr. Campbell's opinion, supported by that of the present Acting Advocate General, agrees with that which I independently formed and expressed some time ago, but it differs from that of Mr. Macpherson,* who thought that the foreshore and (apparently) the bed of the Harbour within Port limits belonged to the Port Trustees. It was this opinion which made it expedient to introduce into our draft Bill for amending the Bombay Port Trust Act a section explaining Section 28 of Bombay Act VI of 1879. I suggested some little time ago that our draft should be submitted to the Advocate General for opinion and advice. He will probably discuss the questions of Port limits and the ownership of the bed of the Harbour within those limits. Section 28, paragraph 2, really confers a license to dredge and dig for the purpose of either local use or removal; the area remains the property of the Crown."

* Vide para. 3 of note on Section 5 of the Bill.

"The right of using the fish-ponds now in question with all things appurtenant thereto and a power of sub-letting might be leased to the Port Trustees at a nominal rent. The arrangement should in the first instance be for but three or four years, as a permanent one should rest on the Bombay Port Trust Act as it will be amended. The taking of a lease by the Trustees should be an admission of the ownership of Government, and to this at present they are not inclined. Still the matter is so important that nothing ought to be yielded by Government of the ownership of the bed of the Harbour. I would ask the Advocate General, with reference to the foregoing remarks, to advise on an arrangement which would transfer the beneficial occupation of the fish-ponds as such, temporarily or permanently, to the Port Trust while reserving ownership of Government over the area occupied by them."

9. The necessary reference was thereupon made to the Government Solicitor, who furnished the following opinion† of the Honourable the Acting Advocate General (Mr. Lang):—

†No. 89, dated 24th September 1891.

"The object Government has in view could be carried out by granting leases to the Port Trustees of the fish-ponds at a nominal rent, either from year to year or for a term of years, reserving power to Government to put an end to such leases, but there may be some difficulty in getting the Trustees to agree to accept such leases. Mr. Justice Parsons, in his judgment in the suit of

the Port Trustees *vs.* Hirji Ardasir Dady, referred to by the Collector, held that though the fish-pond in question in that suit and also another fish-pond, the subject of another suit, both of which are at Back Bay, did not vest in the Port Trustees by virtue of the provisions of Bombay Act 1 of 1873 and Bombay Act VI of 1879, Section 28, yet all the right, title and interest of Government in those fish-ponds (and not merely the right of management as the Collector supposes) had been transferred to the Port Trustees by virtue of the delivery of the possession by the Collector to the Port Trustees, taken in connection with the intention of Government to transfer such interest as shown by the Government Resolution of the 4th February 1889, and the other documents put in evidence in the case. It was upon this ground only that the Port Trustees obtained a decree to eject the then holders. I believe that all the fish-ponds at Back Bay were handed over in the same manner and, if the decision of Mr. Justice Parsons is correct, they are now vested in the Port Trustees, and it may be difficult to compel them to re-transfer them to Government and to take leases instead.

"I am not aware what are the circumstances connected with the transfer of the fish-ponds in other parts of Bombay and as to how far they are vested in the Port Trustees."

10. On this the Honourable Sir R. West minuted* as follows :—

* 8th October 1891.

"The Advocate General appears to agree with me as to the means by which the ownership of Her Majesty and the beneficial rights of the Port Trust may be preserved. But the Port Trust having been put in possession of the fish-ponds, he thinks they can retain them against Government. The decision of the High Court was inexactly represented to Government. In these circumstances I would press a lease on the Port Trustees, and if it should be refused, I would remedy by some appropriate words in the amending Bill the rather unlucky inadvertance through which Government Resolution No. 875, dated 4th February 1889, Revenue Department, handed over the fish-ponds to the Port Trust. It was not intended, I apprehend, to make the Trustees owners of the bed of the sea, but this would probably be inferred."

11. A letter† was then addressed to the Port Trustees, Bombay, stating that His Excellency the Governor in Council, while acknowledging that they had full and undivided rights in regard to fish-ponds in lands which had been transferred to the Port Trust under Bombay Act, 1 of 1873 and Bombay Act VI of 1879, could not recognize any proprietary right of the Trustees over the area of fish-ponds situate in Back Bay or in lands to which the second clause of Section 28 of the Bombay Port Trust Act, 1879, refers. The Port Trustees were at the same time informed that His Excellency the Governor in Council was prepared to lease to the Trustees at a nominal rent the right of using the fish-ponds, &c., provided the ownership of Government over the area occupied by the

† No. 296—G, dated 11th November 1891.

fish-ponds was recognized, and enquiry was made whether they agreed to this arrangement. To this the Secretary, Bombay Port Trust, replied* as follows on the 6th January 1892 :—

* Letter No. 29, dated 6th January 1892.

"Under Section 28 of the Bombay Port Trust Act, 1879, 'the estate, right, title and interest of the Secretary of State for India in Council in the rock, stones, shingle, gravel, sand or soil within the Port' was transferred to the Board and when that Act was passed the limits of the Port were intended and supposed to be as laid down in Government Notification, Territorial Department, (Revenue), dated 7th June 1886, *Government Gazette*, page 1361, and included Back Bay with its fish-ponds. This being so, it seems to the Trustees that they would have a right, subject of course to the provisions of Section 68 of the Bombay Port Trust Act, 1879, to reclaim within the area referred to; and that inasmuch as reclamation could not be carried out either by Government or by others within the area referred to without interfering with the Trustees' rights to the rocks, stones, shingle; gravel, sand or soil over which such reclamation would be effected, the Trustees would also be entitled to require compensation for such interference with their right.

"It appears to the Trustees that the arrangement proposed in your letter under reply would not continue to the Trustees the right to reclaim or to require compensation for reclaiming, as above mentioned; and I am desired to state that if this is so, the Trustees cannot assent to the arrangement."

12. The Port Trustees having thus taken up an uncompromising position, Government decided on legislation to guard the rights of Her Majesty and the public interest in the fish-ponds, and provision for this purpose was accordingly ordered† to be made in the Draft Bill amending the Bombay Port Trust Act.

† Letter to the Legal Remembrancer No. 14 G., dated 25th January 1892.

13. Besides the Back Bay fish-ponds referred to in the correspondence with the Port Trustees, two other fish-ponds, *viz.*, those at Tank Bander, it will be seen, are mentioned in the section of the Bill under notice. In April 1892 the Collector of Bombay brought‡ to notice that out of 5 fish-ponds at Tank Bandar, which were transferred to the Port Trust in 1888, there were two outside the limits of the Tank Bandar area vested in the Port Trust by the Bombay Port Trust Act, 1873, and as the rights of Government over the lands comprised in these fish-ponds were the same as those in the Back Bay fish-ponds, it was deemed advisable to refer to the former fish-ponds also in the section amending the Act.

‡ Letter L. R.—642, dated 4th April 1892.

APPENDIX A.

Minute by the Honourable Sir R. West, dated 9th December 1890.

I wrote on some other papers connected with the proposed amendment of the Bombay Port Trust Act as to the construction of Section 28 of Bombay Act VI of 1879 taken in connection with Section 73 of Bombay Act I of 1873. The limits of the Port are as they may be defined from time to time (Section 5 of Act X of 1889), and it is only the interest of the Crown in shingle, &c., within these limits that is made the property of the Trustees. In so far as the soil and area in Back Bay have been made over, even though mistakenly, to the Port Trustees by Government, the Trustees have a reasonable claim to retain them or else to be recouped at least the expenses to which they have been put in defending their supposed property.

* * * * * * *

I should think it very undesirable to vest the bed of the harbour generally, which is the property of the Crown, in the Port Trustees. It is better, while leaving them the property actually vested in them by the Port Trust Acts, to give them license and authority to deal with the shingle, rocks, &c., within Port limits and to make rules for dealing with them and for levying fees, &c., subject always to the proprietary right of Her Majesty and the right of Government to occupy and dispose of any part of the area in question as shall seem expedient for the furtherance of any public interest.

The limits of the Port ought, of course, to be defined, but I cannot say that this would be desirable or safe at the present juncture seeing what claims have been set up to an ownership of the foreshore.

For the present I think the Trustees should be asked to give up the fish-ponds on being recouped their costs out of pocket in the suits brought against them.

APPENDIX B.

No. $\frac{L.R.}{1361}$ OF 1891.

Bombay Collector's Office, 11th July 1891.

The settlement of the questions contained in these papers requires a correct understanding of the following points :—

(*a*) The history and scope of the shingle, gravel and soil concession embodied in Section 28 of Act VI of 1879.

(*b*) The relations of the Trust and of Government to fish-ponds.

(*c*) The relations of the Trust and of Government to reclamations.

(*d*) The nature and extent of the Trust's claim for compensation for the loss over any portion of the foreshore or harbour bottom of its shingle, gravel and soil interest.

2 (*a*) The shingle, gravel and soil concession in clause 2, Section 28 of Act VI of 1879 runs :—

> The property vested by this section in the Board shall be deemed to include the estate, right, title and interest of the Secretary of State for India in Council in the rock, stones, shingle, gravel, sand or soil within the port.

The records show the following history of this concession which did not find a place in the original Port Trust Act I of 1873.

When in 1874 the Draft Bill (afterwards passed as Act VI of 1879) came before them, the Trustees suggested the following addition to Section 8 :—

> 4 B. The right to sell any rock, stones, shingle, gravel, sand or soil, within the limits of the Harbour of Bombay, provided such sale does not interfere with private rights.

Government Resolution No. 1400, dated 18th November 1874.

Trustees' letter to Government No. 1407, dated 8th December 1874.

With reference to this suggested addition Government observed that the places to which this permission should extend must be sanctioned by Government. On reconsideration the Trustees suggested the following modification :—

> The right to sell rock, stones, shingle, gravel, sand or soil, at such places within the limits of the Harbour of Bombay as may be approved by Government, provided such sale does not interfere with private rights.

Government Resolution No. 258, dated 4th March 1875.

Government approved of this amendment; when the draft was referred to the Legal Remembrancer to Government that officer proposed the following alteration :—

> All the right, title, estate and interest of the said Secretary of State in the rock, stones, shingle, gravel, sand or soil, within the limits of the Port, together with the right, subject to the orders of Government, to dispose of the same or any portion of the same by sale or otherwise.

As certain points regarding the constitution of the Port Trust called for full consideration and discussion, the Draft Act did not come before the Local Legislative Council till 1879. Before the Council the shingle concession as drafted by the Legal Remembrancer was altered by the omission of the clause requiring the sanction of Government to the sale. So far as I have been able to trace, the Port Trust records do not show on what grounds the necessity for Government sanction was foregone. As regards the scope of the shingle concession Mr. Justice Parsons in his judgment in the case of the Port Trust against Hirji Ardasir Dády (July 1890) held that the latter part of Section 28 did not vest anything more in the Trustees than the first part of the section and was merely explanatory of that part. This view of the section is in agreement with the opinion of the Honourable Mr. Lang, the present Advocate General, whom the Port Trust afterwards consulted. Mr. Lang wrote on 4th August 1890 :—

Clause 2 of Section 28 of Act VI of 1879 has not the effect of vesting in the Trustees immoveable property not included in the earlier portion. The latter portion of the section appears to refer to some interest of the Secretary of State in rock, stones, &c., distinct from the absolute interest in the property, and to vest that interest in the Trustees. There seems to be no reason to question the correctness of the Honourable the Advocate General's opinion which is in accord with the history of the framing of the section. It follows that the proprietary right to the foreshore and harbour bottom rests with Government, and that in the event of Government taking any section of the foreshore for any special purpose the Trustees' claim to compensation is limited by the value to them in past years of the shingle concession in the land in question or in neighbouring and similar land.

3 (*b*) The second point for consideration is the relation of the Trust and of Government to the fish-ponds. Much of the existing misunderstanding is due to the different meaning attaching to the phrase fish-pond. The view seems to have been entertained that fish-ponds are distinct landed estates like gardens or house sites, and that the transfer of a fish-pond includes the transfer of the land which the fish-pond contains. The records show that this is a mistaken view. The management of the fish-ponds has never carried with it the ownership of the fish-pond area. The grant of a fish-pond carried with it nothing more than the liberty to fish on payment of a nominal yearly rental of from Re. 1 to Rs. 4.

4. The old licenses or fish-pond grants were in the following terms :—

Breach Candy Fish-ponds.

The bearer * * * * is permitted to fish in the fish-pond situated at Breach Candy marked number in the Revenue Survey plan of this office, dated 5th August 1847, he having paid the sum of one rupee for this license, which is to have effect from 1st November 1847 to 31st October 1848, and is not renewable except at the pleasure of Government.

Bombay Collector's Office.

Collector of Land Revenue.

I have this day accepted a license of which the above is a counterpart.

Witness. (Signature of the Licensee).

Tank Bandar Fish-ponds.

The bearer * * * * is permitted to fish in the fish-pond situated at Tank Bandar, he having paid the sum of two rupees for this license, which is to have effect from 1st May 1860 to 30th April 1861, and is not renewable except at the pleasure of Government.

Bombay Collector's Office.

Collector.

I have this day accepted a license of which the above is a counterpart.

Witness. Signature of the Licensee.)

5. No fish-pond bill did ever show or does now show the area of land in respect of which the rent is paid.

Opinion, dated 7th August 1845, received with letter from the Honourable Company's Solicitor No. 260, dated 9th August 1845.

In 1845 Mr. A. S. LeMeasurier, Advocate General, gave the following opinion on the Mázagaon fish-ponds :—

This part of the seashore does not appear to have been conveyed by any grant but to have been used (and for the sake of argument it may be admitted, immemorially used) for the purpose of fishing and for this purpose only. The soil or ground of the seashore has never been used in any

other way nor claimed till lately or used in any manner to show any right to the soil was asserted as by the exercise of any acts of ownership upon it. The weirs or enclosures appear like others of the same description in other parts of the harbour and Back Bay to have been erected for the more convenient catching of fish that may be left by the retiring tide and not in assertion of any right to the soil, this being a mode of catching fish in Bombay as well as that by nets. Boats also, I understand, have been in the habit of anchoring within these fish-ponds which clearly shows the possession of them to have been not an exclusive possession.

6. If, as there seems no reason to doubt, these views are correct, it follows that the management and profits from fish-ponds carry with them no proprietary right in the soil. The Government land rights in the fish-pond areas remain the same as in the adjoining foreshore.

7. For some time after the transfer in their favor of Government shingle and gravel interests the Port Trust did not raise the question of fish-ponds. In June 1882 the Secretary to the Port Trust asked the Collector whether under Section 28 of Bombay Act VI of 1879 the rents of Back Bay fish-ponds should not be paid to the Trustees. The Collector accepted the view adopted by the Port Trust and forwarded to the Trust a list of all fish-ponds between Colába and Malabár Point with the intimation that on obtaining Government sanction the fish-pond rents would be transferred to the Trustees. The Trustees applied to Government, explaining that under Section 28 of Act VI of 1879 all the right, title and estate of Government in fish-ponds would appear to have been vested in the Trustees, and that from the date that Act came into force all fish-pond rents should apparently have been paid to them. This representation met with the approval of Government, who ordered that the rents from 1882-83 of Back Bay fish-ponds should be transferred to the Port Trust.

No. 1743 of 6th June 1882.

No. 1016 of 8th July 1882.

No. 2127 of 1882.

Government Resolution No. 5408 of 11th August 1882.

8. In 1887 the same question arose regarding the fish-ponds along the eastern foreshore, that is, between Siwri and Colába. Accepting the precedent of the Back Bay fish-ponds, the east coast fish-ponds were transferred to the Port Trust under sanction given in Government Resolution No. 1122 of 18th February 1888, with effect from the official year 1888-89. At the time of this cession the only fish-ponds between Siwri and Colába were those at the Tank Bandar. The Collector advised that if the Trust were to enjoy the fish-pond rents the management of the ponds should be handed to the Trustees. On reference the Secretary to the Port Trust intimated to Government that if it was any convenience to Government the Trutees were prepared to take over such of the fish-ponds as Government might transfer.

No. 2100 of 5th November 1888.

No. 160 of 11th January 1889.

Accordingly under Government Resolution No. 875, dated 4th February 1889, all Back Bay fish-ponds, except one held under the pension and tax tenure, were directed to be handed to the Port Trust.

9. In November 1889 the Secretary, Bombay Port Trust, brought to the Collector's notice that certain ponds on the north or Malabár Point shore of Back Bay had not been handed to the Trust. The Collector replied that the fish-ponds referred to had been resumed by Government in 1868 and destroyed by breaching the walls. As they had yielded no revenue since 1868 it seemed unnecessary to hand the ponds in question to the Trust. Other fish-ponds were made over because they were in the hands of private persons, and as the occupation of the holders had not been disturbed a formal transfer to the Trust of the Government right to recover rents was necessary.

No. 4823 of 5th November 1889.

No, 2689 of 11th December 1889.

10. After the fish-ponds were transferred to the Port Trust, certain persons, who had rented the fish-ponds from Government, refused to recognize the Trustees' rights over the ponds. In 1890 the Trustees brought a suit in the High Court for the ejectment of the fish-pond-holders who they urged had no more than a yearly interest terminable at any time after notice by Government and now by the Trust since Government had transferred to the Trust the management and proceeds of the ponds. In his judgment Mr. Justice Parsons held that as the Trustees had proved that Government had handed the fish-ponds to them, all the interest of Government in the ponds was vested in the Trustees. This finding was independent of the transfer of shingle, gravel and soil interests by Section 28 of Act VI of 1879. With regard to that section Mr. Parsons held that the second clause was explanatory and did not vest anything more in the Trustees than the first clause vested.

Trustees' letter to Government No. 3397, dated 18th August 1890,

Suit No. 141 of 1890. The Trustees of the Port of Bombay *v.* Hirji Ardasir Dády.

11. In his report to Government on the Trustees No. 3397, dated 10th August 1890, quoted above, Mr. Monteath referred Government to his No. $\frac{L.R.}{1962}$ of the 10th October 1890, on the subject of the proposed reclamation by Government at Colába in which he had expressed an opinion as to the effect of Section 28, clause 2, of Bombay Act VI of 1879, which was in accordance with that of the Counsel for the Port Trustees and apparently also of the Honourable Mr. Justice Parsons, and pointed out that if all land in the port covered at high water was admitted to be the property of the Port Trust, that body might become the owner of very vast property of a kind, which it was never contemplated should be held by it by allowing extensive reclamation in Back Bay and in mud flats on the island and mainland on the south side of the Harbour. That it was competent to Government under the Indian Ports Act, 1889, to alter the Port limits by notification whenever it chose, and that he could not conceive in these circumstances that it was the intention of the concession of shingle right under Section 28 of Act VI of 1879 to assign to the Port Trustees an absolute proprietary interest in any specified area, that the use of the term 'soil' might no doubt be held to indicate a permanent proprietary right, but the whole expression seemed to imply a right to take or sell or give rock, &c., including soil in Port limits, and one of these he imagined was high water mark, whatever at any time it might be and not high water mark as it was when the Act was passed. Mr. Monteath therefore presumed that Government would not pass an Act for the purpose of giving the Trustees a permanent proprietary right in all the area within the limits of the Port, and that therefore he was averse to the transfer by conveyance of the fish-ponds to the Trustees.

No. $\frac{L.R.}{2080}$, dated 29th October 1890.

12. In February 1891 Government, accepting the views expressed in this letter, issued a Resolution stating that the fish-ponds had been transferred to the Trustees under a misapprehension and should be restored. In the letter now under consideration the Port Trust in reply pray that this decision of Government may be reconsidered and seeing that

No. $\frac{L.R.}{2080}$, dated 29th October 1890.

No. 48, dated 18th February 1891.

No. 1440, dated 11th April 1891.

(*a*) The walls of fish-ponds are made of stone and shingle, the interest in which vests in the Trust, and

(*b*) If the management and profits from the pond is taken from them, the Trust will be prevented exercising their rights over the stone, shingle and soil in the pond enclosure, the Trust hope that Government will allow the fish-ponds to remain vested in the Trustees.

13. I venture to think that recently expressed opinions of Messrs. Winchester and Marzbán, which I find recorded in the office file, misled Mr. Monteath into thinking that the transfer of the fish-ponds, proposed by former Collectors and approved by Government, carried with it the proprietary right to the land included within fish-pond limits. I venture to think that the details given above show that no transfer of proprietary rights was ever contemplated.

It may be urged that in his finding in the case Port Trust *v.* Hirji Ardasir Dády, Mr. Parsons' remark that the Trustees had proved that Government had transferred to the Trust the entire Government interest in the ponds implied that Mr. Parsons held the proprietary right in the pond land had been transferred. I venture to think this view is mistaken. The question before the Court was this, had the Trust proved that Government had vested in the Trust all the interest and power of Government in the management of and profits from the ponds. It was this which the Court held the Trustees had proved. The question before the Court was not the ownership of the land but the management of the ponds. As has already been noticed, Mr. Parsons was careful to record his opinion that clause 2 of Section 28 of Act VI of 1879 was only explanatory. This view has the support of the present Advocate General who has advised the Trust that the shingle interest detailed in clause 2 of the section is distinct from the absolute interest in the property.

14. It has been shown by the summary of the correspondence given above that at no time and by neither party has any interest in the fish-ponds been transferred except under the above shingle, gravel and soil concession. If therefore what seems beyond question the shingle concession does not carry proprietary right in the land, Government have never parted with their proprietary right in the land included within fish-pond limits. As far as the land goes, fish-pond bottoms are in the same position as the rest of the foreshore. For this reason and from the evidence given below regarding reclamations, which, when he wrote, was not available to Mr. Monteath, I venture to think that Mr. Monteath was misled in supposing that any sacrifice of proprietary right had been allowed in the matter of the fish-ponds, and that neither the Collector nor Government were under a misapprehension when they recommended and sanctioned the transfer of management and profits to the Trustees. If these views are accepted it follows that the position maintained by Government till 1890 in the matter of the Port Trust relations to fish-ponds was correct and need not be altered.

15. Fish-ponds are either—

(*a*) in the lands included in Schedule C. of Act I of 1873;

(*b*) in lands over which Section 28, clause 2 of Act VI of 1879 has given the Trust shingle rights.

Fish-ponds in lands transferred to the Port Trust under Act I of 1873 or VI of 1879 are entirely the property of the Trust. Government have no interest either in the ponds or in the lands covered by the ponds.

In the lands over which Section 28 of Act VI of 1879 has given the Trust shingle rights Government have retained their proprietary rights. Strictly then, Government have the right to the water covering that land and to the fish the water contains. At the same time seeing as urged by the Port Trust that—

Port Trust to Government, 1440, para. 2 of 11th April 1891.

(*a*) The fish-pond walls are made of stones vested in the Trust.

(*b*) The use of the area as a fish-pond prevents the exercise of the Port Trust shingle rights, the view that the Trust should continue to enjoy the fish-pond rents seems fair and free from objection.

16. I would therefore venture to recommend that Government should inform the Port Trust—

(*a*) That as regards fish-ponds in lands transferred to the Port Trust under Act I of 1873, or VI of 1879, Government consider the Trust have full and undivided rights.

(*b*) That if the proprietary right of Government in the land is admitted, Government are willing to continue the Trust in their management and enjoyment of the rentals of all other fish-ponds.

17. In their letter to Government, No. 3297, dated 18th August 1890, the Port Trust have urged that the concession of the management and profits from fish-ponds should be confirmed by a conveyance. Mr. Monteath in his

letter No. L.R./2080, dated 29th October 1890, was, for the reasons quoted above, opposed to so formal a transfer under the condition that the proprietary right of Government in the land is admitted, and that Government may take the land for any other purpose. I do not see any objection to Government meeting the wish of the Trustees in this matter.

18. The relations of the Port Trust and Government to foreshore reclamations. What gives consequence to the settlement of fish-pond rights is the chance that the transfer of the fish-ponds may enable the Trustees to contend that the shingle concession includes the right to reclaim and to arrange reclamations over the whole harbour foreshore. Mr. Monteath was unable to ascertain whether the question of the management of reclamations had ever been raised between Government and the Trust. He was therefore rightly apprehensive lest the transfer of fish-ponds might give weight to the contention that the very important right to reclaim had also been transferred. Had Mr. Monteath the opportunity of examining the correspondence noted below, he would, I think, have been satisfied that Government had already refused to allow any lessening of their reclamation rights.

19. Under Act I of 1873, Schedules B and C, the foreshore of the lands, noted in the margin, has been vested in the Trust. The Trust have nowhere been given any special reclamation rights over the portions of the foreshore so granted. Still it would seem within the competency of the trust to reclaim any portion of such foreshore. In the case of the other 23 properties vested in the Trust, either under Act I of 1873 or Act VI of 1879, no foreshore rights were ceded except the right to levy wharfage fees in the four marginally noted localities. It therefore follows that except in the Tank, Kasara, Elphinstone and Mody Bay Properties and in the Warli-Mahim foreshore the right and interest of the Trust are limited to those conferred by the rock, shingle, stone and soil concession. It has been shown under the head Fish-ponds that the shingle interest carries with it no proprietary right over the land of the foreshore. It therefore follows that with the exceptions noted above, neither Act confers on the Trust any right to reclaim the foreshore within harbour limits.

1. Tank Bandar.
2. Kasara.
3. Elphinstone property.
4. Mody Bay.
5. Warli-Mahim Foreshore.

Act I of 1873.
1. Shivri Bandar.
2. Mazagaon.
3. Mallet.
4. Customs.
5. Wellington and
6. Apollo.
7. Land near Sassoon Dock.
8. Chaupati.

Act VI of 1879.
9. Sassoon Dock.
10. New Colába Company.
11. Apollo Press.
12. Mazagaon Land Company.
13. Frere Land Company.
14. 23 Small Properties.

1. Wari Bander.
2. Gun Carriage reclamation.
3. Sassoon Dock to Colába.
4. Back Bay.

Act VI, Section 28-2.

20. In 1874 when the Amended Port Trust Bill was forwarded to the Trustees for opinion they suggested the insertion of the following clause, Section VIII, clause 4.

4 *a*. The right of reclamation in front of land vested in the Trustees and of granting to others the right to reclaim within harbour limits, provided such reclamation does not interfere with private rights.

Government Resolution, Marine Department, No. 1400, dated 8th November 1874.

In reply Government held that the Port Trust's proposed power of granting to others the right to reclaim might be permitted, provided the sanction of Government was obtained.

In reply the Trustees stated that they desired that application for permission to reclaim should in the first instance be made to them, and that before granting such application they should obtain Government sanction.

No. 1407, dated 8th December 1874.

Government Resolution, Marine Department, No. 258 of 4th March 1875.

In reply Government informed the Trust.

If it is intended that Government shall be debarred from granting permission without the concurrence of the Trustees, Government consider the alteration inexpedient. In consequence of this reply the Trustees did not press their proposal.

21. In August 1890 with the view of placing beyond question the right of Government to all reclamations except on the lands assigned to the Trust under Act I of 1873 and Act VI of 1879, Government wrote to the Trustees proposing the following clause for insertion in the Bill amending the Port Trust Act VI of 1879 :—

No. 208—G., dated 18th August 1890.

> Nothing in Section 28 of the Port Trust Act, 1879, or any other law shall be held to annul, to diminish or interefere with the right of Government to the bed of the sea in front of lands on shore which are its property, provided that the rights of the Trustees along the shore or wall bounding any reclamation shall be the same as they would have been on and along the strand or shore in front of which such reclamation projects, had the reclamation not been made.

In reply the Trustees contended that clause 2 of Section 28 contained no reservation in favour of Government. On the contrary that clause transferred or was intended to transfer the estate, right, title and interest of the Secretary of State for India in Council in the rocks, stones, shingle, gravel, sand, or soil within the Port to the Board, and the Trustees would not be prepared to agree to any arrangement which would deprive them of the right to require such compensation as they might in each case think adequate.

No. 3600, dated 1st September 1890.

Since this expression of the Trustees' views no further action has been taken by Government.

22. It will be seen that in their last letter No. 3600 of 1st September 1890, the Port Trust withdrew from their claim to any right in the management of foreshore reclamations, because of the Trust's shingle rights. The Trust limited their claim to compensation for the loss of shingle rights over the reclaimed area. The position taken by Government in their letter 208 of 18th August 1890 is to admit the right of the Trustees to reclaim in front of

(*a*) Tank Bandar, Kasara Bandar, Elphinstone Estate and Mody Bay, and the Worli and Máhim Foreshore, of which under the Act the foreshore is specifically vested in the Trustees.

(*b*) Siwri, Mazagaon, Mallet, Custom, Wellington and Apollo Bandars, Land near Sassoon Dock, and Chaupati Bandar, also the smaller properties handed to the Trust in 1879 in which the legal right of the Trust does not include any portion of the foreshore below mean high water level.

The same letter provides for the retention by Government of complete reclamation authority as regards—

Government to Port Trust, No. 208, dated 18th August 1890.

(*a*) The foreshore between Sassoon Dock and Colába Point and the Back Bay foreshore in which the Trust's interest is limited to the levy of wharfage fees and the interest in shingle.

(*b*) To the rest of the Harbour foreshore where the shingle interest forms the sole right enjoyed by the Trust.

23. I would notice that compared with the existing position this proposal involves a valuable concession to the Trust, namely, the foreshore of those sections of the east shore of Bombay Island over which the interest of the Trust has hitherto extended only so far as high tide level. It is true that in such locality without causing serious loss to the Trust, Government could neither reclaim themselves nor sanction reclamation. At the same time the grant of the foreshore is a concession of sufficient value to justify Government in putting forward some counter claim.

24. I venture to think that strictly the position taken by the Trust in their letter No. 3600 of 1st September 1890, that they could not without compensation forego their shingle interest in portions of the foreshore taken for reclamation is correct. This claim for compensation would, I take it, be limited to the capitalized annual net shingle rental enjoyed by the Trust since 1879 over the land proposed to be reclaimed. This in almost all cases would be a very

small amount. I would suggest that the cession of foreshore reclamation rights over a large part of the east of Bombay Island is a most liberal compensation for any loss of shingle revenue, which reclamation by or with the approval of Government in any part of Harbour limits would ever cause. I would, therefore, venture to suggest this as the basis of a settlement of the foreshore reclamation question.

25. As regards the procedure which has been followed of late years in the matter of reclamations it appears that since 1879 three reclamation schemes have been carried out. These three reclamations have been the work of the Port Trust since 1879, neither Government nor any private Company has undertaken any reclamation. It appears that in the first of the three reclamations the work was entered in the Port Trust Budget and the Budget passed by Government without any special or separate sanction for the reclamation. As part of the land reclaimed was foreshore which did not vest in the Trust, specific sanction should, I think, have been obtained. For No. 2, the Apollo Basin Reclamation, special sanction was obtained for a group of works aggregating (10) ten lákhs in which the Apollo Basin Reclamation scheme was included. As about half an acre of Government foreshore appears to have been included in the project specific reclamation sanction should have been obtained.

RECLAMATIONS, 1879—1891.

	Locality.	Date.	Area reclaimed.	Cost.	Character of land reclaimed.
				Rs.	
1	Colába, south of Sassoon Dock.	1879...	1 Acre ...	8,602	Partly Trust, partly foreshore.
2	Apollo Bay Reclamation.	1888-89.	2 Acres ...	1,23,000	Port Trust partly foreshore.
3	Mody Bay ...	1886-87.	This was a continuation of former reclamation with material taken from Victoria Dock.		Port Trust.

For Reclamation No. 3 (Mody Bay) no specific sanction was obtained. The work was in continuation of a former reclamation and the land was Port Trust land. In this case specific sanction seemed less necessary than in reclamations Nos. 1 and 2. In addition to the above, I understand, that last year with material dug from the Graving Dock the Trustees reclaimed some of the foreshore in front of the Hindu burial-ground at the Tank Bandar. The area reclaimed was within the land vested in the Trustees by Schedule C of Act I of 1873. Specific sanction was therefore less necessary. If the intended additional clause is embodied in the Act, the Trust will not be in a position to reclaim any foreshore except portions specially vested in them. In such cases the General Budget sanction would, I venture to think, be sufficient.

26 (*d*) Compensation.

If Government make or arrange a reclamation, has the Trust any claim for compensation, because of the loss of the exercise of the Trust's shingle rights over the area reclaimed ?

The answer to this question seems somewhat doubtful. As regards fish-ponds it appears to me if Government take for reclamation or other purpose land now yielding the Trust rent as a fish-pond the Trust is entitled to compensation for the loss of the fish-pond rent. Against this view it may be urged that the fish-pond is not any one definite area. That what brings rent is the right to fish the foreshore. That if the existing pond is taken for other purposes the Trust can build dykes and weirs on some other portion of the foreshore. The Trust therefore suffers no loss and can claim no compensation. In theory this argument may be sound. At the same time in fact the fish-pond sites are limited. The ponds are almost always on the same portion of the foreshore, if this portion of the foreshore is required by Government for any other use than a fish-pond, I venture to think that the Trust have a claim for compensation equal to the capitalized rental of the fish-pond.

27. As regards shingle rights in foreshore lands other than fish-ponds, two arguments may be urged against the Trust's claim for compensation.

(*a*) When a portion of the foreshore is reclaimed, the reclaimed area ceases to be within Harbour limits, therefore the Trust's shingle rights over the reclaimed area lapse.

(*b*) That the exercise of shingle rights is subject to the approval of Government, and that in many parts of the foreshore as in the Máhim beach for public reasons the exercise of shingle rights is forbidden. In support of (*a*) it may be urged that the foreshore over which shingle rights have been transferred to the Trust is not the foreshore existing when Act VI of 1879 was passed, but whatever at any time may be foreshore.

In spite of this consideration it seems to me fairer to hold that as the reclamation has cost the Trust the loss of their shingle right in the land reclaimed, the Trust have a claim for compensation.

Similarly, as regards (*b*) unless in the land reclaimed the taking of soil and shingle has already been forbidden, I incline to hold the Trust have a right to compensation.

28. The basis of compensation in any case of land reclamation would be the capitalized shingle rental of the land reclaimed. This in no case is likely to amount to a considerable sum. Shingle profits have hitherto been and are likely to continue little more than nominal. As shown in the margin, the average for the seven years ending 1890 is Rs. 2,307, of which Rs. 333 represent the value of the shingle concession in Back Bay and Rs. 1,973 the value of the concession in all other parts of the harbour.

Years.	Fees for removal of sand and mud from	
	Eastern Foreshore.	Back Bay.
	Rs. a. p.	Rs. a. p.
1883-84	3,126 13 0	333 6 3
1884-85	2,375 14 3	384 10 11
1885-86	2,225 0 0	361 5 3
1886 87	2,370 0 0	613 9 3
1887-88	1,400 0 0	327 11 6
1888-89	805 0 0	219 8 6
1889-90	1,511 0 0	93 7 6
	13,813 11 3	2,333 11 2
Average ...	1,973 6 2	333 6 2

29. As regards the basis of compensation, I have already ventured to suggest that the proposed grant to the Trust of certain portions of the east foreshore of Bombay Island, at present the property of Government, is a concession so valuable as to much more than cover any claim which the Trust may have on the ground of loss of fish-pond or other shingle revenue from any land likely to be taken by, or with the sanction of, Government for purposes of reclamation.

30 (*e*) Harbour limits.

Is any change in the existing harbour limits necessary?

Port Trust against Hirji Ardesir Dady.

During the hearing of the High Court suit brought by the Port Trust against certain fish-pond holders it was shown that the repeal by Act XII of 1876 of Section 73 of the Port Trust Act I of 1873 left no definition of the Port for the purposes of the Port Trust Act. The Indian Ports Act X of 1889, empowers Government to alter the limits of the Port. In their letter No. 3397 of 18th August 1890, the Port Trust have asked Government that some authoritative definition of the harbour limits should be published. When he found, as he supposed, that Government had abandoned to the Port Trust their proprietary rights in the foreshore, Mr. Monteath suggested that the mistake might be rectified by the issue of a fresh definition of Port limits from which such portions of the foreshore as it was advisable Government should keep in their own hands might be excluded.

Two questions now remain for settlement.—

(*a*) Is a fresh definition of harbour limits required?

(*b*) Is it necessary or advisable to make any change in the former definition of harbour limits?

As to (*a*) there seems no doubt that by an oversight when Act XII of 1876 repealed the proviso to Section 73 of Act I of 1873, neither was a notification in

existence defining Harbour limits under Section 73 of Act I of 1873, nor was a fresh definition included in the Port Trust or Indian Ports Act. A fresh notification of harbour limits is therefore necessary.

As to (*b*), the need for altering the existing limits, I am respectfully of opinion that the limits laid down in the Indian Ports Act are the true and natural limits of the Harbour. They should not be altered except under the pressure of very special reasons. If by a misunderstanding of the scope of the shingle concession Government had handed reclamation rights to the Port Trust within harbour limits, it might be necessary to correct that error by excluding from harbour limits the portion of the foreshore which it was advisable to keep in the hands of Government. I venture to think that any such definition would be most difficult to frame and would be found an awkward and somewhat invidious device for correcting the error. If, as I venture to hope, I have succeeded in proving Government have not parted with any proprietary rights either in fish-ponds or in reclamations, any narrowing of harbour limits becomes unnecessary. So far as the present question is concerned, I venture to think all that is required is that the limits laid down by the Indian Ports Act be accepted as the limits under the Port Trust Act.

(31) (*f*). Conclusion.

To sum the above, the action which I venture to recommend on the points requiring settlement is :—

(*a*) Government to re-affirm their proprietary right in, and their full control over, lands under high tide level within Harbour limits except the portions of the foreshore vested in the Port Trust under Acts I of 1873 and VI of 1879, and any further portions of the foreshore which Government may see fit to vest in the Trust.

(*b*) The notification fixing Harbour limits under the Indian Ports Act to be republished.

(*c*) On condition that such enjoyment carries with it no proprietary right in the land, Government to express their willingness to continue the existing cession to the Trust of the management and rental of all public fish-ponds within Harbour limits.

(*d*) As regards compensation that the proposed concession of portions of the east foreshore be considered a set off against any claim of the Trust for loss of shingle or fish-pond revenue which may arise from any future foreshore reclamation.

(Signed) J. M. CAMPBELL,
Collector.

III.

Section 5.—Saving of right of Her Majesty to the bed of the sea.

In 1890 the Executive Engineer, Presidency (Mr. Marzbán), reported *as follows in reply to an enquiry whether certain land, which it was proposed to reclaim for additional military accommodation on the east of Colába, was within or without the Port Trust boundaries.

* Letter No. 2586, dated 26th May 1890.

"1. Sub-sections 3 and 4 of Section 4 of the Indian Ports Act X of 1889, Chapter II, run as follows:—

"3. Limits defined under sub-section (2) may include any piers, jetties, landing-places, wharves, quays, docks and other works made on behalf of the public for convenience of traffic, for safety of vessels or for the improvement, maintenance or good government of the Port and its approaches, *whether within or without high water mark*, and, subject to any rights of private property therein, and portion of the shore or bank *within fifty yards of high water mark*.

"4. In sub-section (3) the expression 'high water mark' means the highest 'point reached by ordinary spring tides at any season of the year.' Under the above sub-sections it appears to me that the whole of the land at the foreshore covered at high water is the property of the Port Trustees.

"2. In Government Notification, Territorial Department, Revenue, dated 7th June 1866, the western boundary of the Port Trustees' property is laid down as follows:—

'To the west.—The eastern shore of the Island of Bombay from the Fort of Siwri to the Colába Light-house and the shore of *Back Bay from Colába Light-house to Malabar Point*, thence a line drawn to the outer Light Vessel and continued to the west point of Kundari Island and thence by the north along the eastern shore of the Island to the south point thereof.'

"3. In Section 28 of the Port Trust Act VI of 1879, Chapter IV, it is laid down that—

'The property vested by this section in the Board shall be deemed to include the estate, right, title and interest of the Secretary of State for India in Council in the rock, stones, shingle, gravel, sand or soil within the Port, and also the right of levying rates on all goods landed at or shipped from any part of the foreshore between *Malabár Point and Colába Point*.'

"4. It appears to me from the above authorities that the land proposed to be reclaimed at Colába is within the boundaries of the Port Trustees' property."

2. The Collector of Bombay (Mr. Winchester), to whom a reference was made, stated that in his opinion the Executive Engineer, Presidency, was right, and that the reclamation proposed was within the

Port Trust boundaries. The papers were then submitted to the Honourable Board with the following note by the Secretary to Government, Public Works Department :—

"If these opinions are correct, it appears necessary to amend the definition of the limits of the Port in such a way as to reserve to Government the right to reclaim on both sides of the Colába Point and elsewhere.

"The Secretary would ask for permission to refer the case for the opinion of the law officers as to what the rights of Government are in respect of the contemplated reclamations and, if necessary, what course should be adopted to secure such rights without restriction except in respect of the right to levy rates on goods landed which appertains to the Port Trustees."

On this the Honourable Sir R. West minuted as follows :—

"It will be best, I think, to take the opinion of the Advocate General through the Government Solicitor. The estate vested in the Port Trustees as specified in Schedule C of the Bombay Act I of 1873 seems to include only a very limited part of Colába. The right to 'sand or soil within the Port' given by Section 28 of Bombay Act VI of 1879 extends only to such an area as Government chooses to include in the Port under Section 3 (2) of the same Act. The Notification of 1866 defines the Port for the present, but it can be varied as Government think fit, and without affecting the right of the Port Trustees to levy landing fees, &c.

"The questions to be put to the Advocate General will be whether the proprietary and other rights vested in the Port Trustees make it illegal for Government to reclaim any and what part of the Colába foreshore without purchasing the area from the Port Trustees and whether the Trustees are at liberty to sell such area.

"Whether Government is at liberty to vary the limits of the Port at discretion and with what effect as to the limits of the Trustees' property.

"The effect of a reclamation on the Trustees' rights as to fees, &c.

"The advisableness of legislation on the subject."

3. A reference, as ordered, was made to the Government Solicitor who forwarded the following opinion* of the Honourable the Acting Advocate General (Mr. Macpherson.)

* No. 60, dated 15th July 1890.

"1. I am of opinion that Government is not entitled to reclaim the foreshore in question without purchasing the same from the Port Trustees. The Port Trustees have power to sell such foreshore to Government (Bombay Act VI of 1879, *Section* 26), and Government's 'previous sanction,' as required under that section would be necessarily involved in such a transaction. If Government cannot come to terms, as to a sale, with the Port Trustees, *Section* 32 of the Bombay Act VI of 1879 renders Act X of 1870 applicable.

"2. I am of opinion that Government is not at liberty to vary the limits of the Port so as to interefere with any vested proprietary rights of the Port Trustees Section X of 1889, *Section* 5 the limitation in which, in my opinion, protects the rights of the Port Trust.

"3. All rights of the Port Trustees to fees and otherwise in respect of the foreshore in question would pass therewith to Government, upon the forshore being acquired by Government unless such rights should be specially reserved to the Port Trust by agreement of the parties. The value of all such rights lost to the Port Trust by reason of the acquisition would be an item in the purchase money or compensation paid to them.

"4. I see no necessity for legislation, as the existing law appears to me to provide adequately for such a case as that in question."

Thereupon the following minutes were recorded:—

By His Excellency the Governor, dated 23rd July 1893:—

"It appears to me that we shall have to try legislation. I do not see the equity of *purchasing* back from the Port Trust public property, on which possibly the Trustees have spent nothing."

By the Honourable Sir R. West, dated 24th July 1890:—

"The opinion given by the Advocate General is a very superficial one, and is, I think, wrong, under Section 5 (1) of the Ports Act X of 1889, the local Government may alter the limits of any port 'subject to any rights of private property.' The Advocate General thinks, apparently, that the estate of the Port Trustees is private property. But as it is vested in them only as a board to carry out the purposes of Bombay Act VI of 1879 and not for any private purpose (see Sections 4 and 28 of the Act and Section 8 of Bombay Act I of 1873), it is not 'private property' nor can any rights in it held by the Trustees affect the authority of Government to change the limits of the Port if necessary. Act X of 1889 'to consolidate and amend the law relating to ports and 'port charges' is a general Act which operates side by side with the Bombay Port Trust Act, but does not in any way repeal it. It obviously was not intended in any way to affect the relations of the Trustees to Government. In case of difference between the two Acts, the Port Trust Act as being the more specific and limited in operation would prevail over the Ports Act as being the more general. Now under the Port Trust Act, Section 3 (2) Government can, for the purposes of the Act, define the Port from time to time as it will. The Port seems never to have been defined since 1866, and, if necessary, the foreshore can be withdrawn.

"It was clearly *not* vested in the Trustees by Section 8 and Schedule C of Bombay Act I of 1873, and Section 28 of Bombay Act VI of 1879 provides for shingle, &c., which may be raised within the Port as defined by Government from time to time."

"It is quite plain that Act X of 1889 is not meant to alter in any way the Bombay Port Trust

Act as to property and rights connected therewith. But as our Act amending the Port Trust Act has to be introduced, we may as well put in a section saying that 'nothing in Section 28 of Bombay Act VI of 1879 or any other law shall be held to annul, diminish or interfere with the right of Government to the bed of the sea in front of lands on shore, which are its property, provided that the rights of the Trustees along the shore or wall bounding any reclamation shall be the same as they would have been on and along the strand or shore in front of which such reclamation projects had the reclamation not been made. If the existing law is as I understand it, such a clause will make no difference; if it is as the Advocate General expounds it, such a clause is necessary to prevent the guardians of the public interest in our sphere from becoming its enemies in another."

With reference to the foregoing minutes the Remembrancer of Legal Affairs was instructed* to insert a clause in the draft Bill amending the Bombay Port Trust Act to secure the right of Government to reclaim on the foreshore without affecting the right of the Port Trustees to levy landing fees, &c., and as it was deemed advisable by the Honourable Board that the Karáchi and Aden Port Trust Acts should also be amended in this respect, the Legal Remembrancer was told to make similar provisions in the drafts of the Bills to amend those Acts. At the same time references were made to ascertain the views of the Port Trustees, Bombay, Karáchi and Aden, on the amendment proposed. The Secretary, Bombay Port Trust, in reply,† stated that in Section 28 of the Bombay Port Trust Act, 1879, there is no reservation in favour of Government, but that, on the contrary, it transfers or was intended to transfer the "estate, right, title and interest of the Secretary of State for India in Council in the rock, stones, shingle, gravel, sand or soil within the Port" to the Board, and that the Trustees would not be prepared to agree to any arrangement which would deprive them of the right to require such compensation as they might in each case think adequate. The Secretary, Bombay Port Trust, added that the Trustees therefore hoped that Government would do, with regard to Section 28 of the Bombay Port Trust Act and with regard to defining the limits of the Port as requested in Port Trust letter No. 3397, dated 18th August 1890, leaving the question of compensation to be arranged with the Trustees as each case of proposed reclamation either by Government or otherwise might arise.

* Letter No. 207, G., dated 18th August 1890.

† Secretary's letter No. 3600, dated 1st September 1890.

The Port Trust letter, No. 3397, dated 18th August 1890, to which reference is made by the Secretary, Bombay Port Trust,

relates to the question about fish-ponds, which is dealt with in the note (II) on Sections 3 and 4 of the Bill. The Commissioner in Sind forwarded a letter* from the Chairman, Karáchi Port Trust, who stated that the Port Trustees wished to be informed why it was necessary to insert the clause proposed and what proposed works or reclamations it was intended to include. The Commissioner remarked† that the Karáchi Harbour was so situated that reclamations undertaken without full consideration within its limits or even in its neighbourhood might have a most prejudicial effect upon the safety and convenience of the ports. The Port Trustees, Aden, had‡ no objection to the insertion of the proposed section.

* No. P. T. 2962, dated 13th September 1890.

† No. 1305, dated 20th September 1890.

‡ Letter No. 476, dated 7th October 1890.

5. The replies received were submitted for the information of the Honourable Board, and a Resolution§ was then issued approving of the draft Bills prepared by the Remembrancer of Legal Affairs to amend the Bombay, Karáchi and Aden Port Trust Acts.

§ No. 167, dated 23rd June 1891.

6. In October 1890 a letter¶ was received from the Collector of Bombay (Mr. Monteath) expressing his dissent from the opinion of his *locum tenens*, Mr. Winchester and Mr. Marzbán, as to the proprietary right of the Port Trustees, Bombay, to the whole of the land at the foreshore covered at high water mark. A copy of this letter is attached, *vide* Appendix C.

¶ No. $\frac{\text{L. R.}}{1962}$ dated 10th October 1890.

APPENDIX C.

No. $\frac{\text{L. R.}}{1962}$ of 1890.

FROM

THE COLLECTOR OF LAND REVENUE, CUSTOMS AND OPIUM;

To

THE SECRETARY TO GOVERNMENT,
Public Works Department.

Bombay Collector's Office, 10th October 1890.

Sir,

In the memorandum from this Office No. 1161 of 23rd June last, concurrence was expressed in the opinion of the Executive Engineer, Presidency, with reference to a proposed reclamation for military purposes at Colába, that the whole of the land at the foreshore covered at high water is the property of the Port Trustees. I am reluctant to take up a new question dealt with by my *locum tenens;* but the view expressed might, if adopted, have such important consequences that I am constrained to submit for the consideration of Government my own opinion, which differs from that of Mr. Winchester and Mr. Marzbán. If all land in the Port covered at high water is the property of the Port Trustees, that body might become the owner of very vast property of a kind which, I think, it was never contemplated, should be held by it by allowing extensive reclamation in Back Bay and in mud flats on the island and mainland on the other side of the Harbour. Such proposals as have been made by the Extension Committee and otherwise for reclamation in Back Bay have always I think been considered, on the assumption that the land reclaimed would belong to Government.

2. Mr. Marzbán quoted in support of his opinion sub-sections (3) and (4) of Section 4 of the Indian Ports Act, 1889. But these provisions relate only to notifications extending the Act or specific provision of the Act to ports in which they are not yet in force, and, so far as I can see, do not in any way affect the question at issue. Whatever right the Trustees have in the shore, besides the bandars and foreshores specifically assigned to them, depends on the latter part of Section 28 of the Bombay Port Trust Act. It includes "the estate, right, title and interest of the Secretary of State in Council in the rock, stones, shingle, gravel, sand or soil within the Port." The term 'port' has not, so far as I know, been defined in any of the enactments relating to the matter; but it has been understood to mean the area up to high water mark within the territorial limits notified. It is competent to Government under the Indian Ports Act, 1889, as it was under previous similar enactments, to alter these limits by notification whenever it chooses, and I cannot conceive in these circumstances that it was the intention of the provision above quoted to assign to the Port Trustees an absolute proprietary right in any specific area. The use of the term "soil" may, no doubt, be held to indicate a permanent proprietary right, but the whole expression seems to imply only a right to take or sell or give rock, &c., including soil, in Port limits; and one of these, I imagine, is high-water mark whatever at any time it may be, and not high-water mark as it was when the Act was passed. At any rate, it would always be competent to Government to reclaim or to secure for the general tax-payer the benefit of any reclamation by altering the limits of the Port.

I have, &c.,

(Signed) J. MONTEATH,
Collector.

Sections 6 and 7. Authorizing the Port Trustees to levy charges for the use as well as for permission to use any of their docks, and for services rendered to vessels, &c.

In 1891, the Port Trustees submitted* draft bye-laws for the management of the Merewether Dry Dock (which had been opened to the public) also a scale of rates which it was proposed to levy for the use of the Dock.

* Letter No. 907, dated 10th March 1891.

2. With respect to the scale of rates the Remembrancer of Legal Affairs reported† as follows:—

† No. 741, dated 27th April 1891, para. 14.

"I cannot find anything in Section 43 of the Bombay Port Trust Act which enables the Board to frame a scale of charges for the use of a dry dock. When the Act was passed, there was no dry dock in existence and nothing was inserted in the section to cover the case of such a dock, should one afterwards be constructed. The section will, I think, need to be amended by the Legislature before His Excellency in Council can sanction the proposed scale of charges under it."

3. To this the Secretary, Bombay Port Trust, replied:—

"Possibly the Trustees have power, with the sanction of Government, to frame the scale of charges for the dry dock and an amendment of the Act is not necessary.

"1st. The Trustees are of opinion that Section 43 (*b*) and (*c*) would be held to be applicable to a dry dock inasmuch as by Section 3 of the Act, sub-division 8, a 'dock' includes basins, graving docks, graving blocks, &c., &c., and a dry dock and a graving dock are the same. It was contemplated that the Port Trustees might construct graving docks, *vide* Section 68.

"2nd. If it is correct to assume that the word dock, in Section 43 (c) includes a dry dock, the words *for permission for vessels to approach or be alongside*, although not precisely applicable to a vessel entering and lying in a wet dock are (having been held to be applicable) equally applicable to a vessel entering and lying in a dry dock."

4. With reference to the above, the Legal Remembrancer stated:—

"The words 'for permission for vessels to approach or be alongside' appear to me to fail altogether to meet the case of a dry dock. They are not by any means sufficient for a wet dock and perhaps it would be well, now that their insufficiency for this purpose has been brought to notice, to make the new section 43A of the Act apply both to *wet* and to dry docks."

5. The new Section 43A was accordingly altered so as to include wet docks. At the same time a draft of the sections it was proposed to insert after Section 43 of the Port Trust Act, 1879, was forwarded‡ to the Port Trustees for their opinion

‡ Letter No. 235 G, dated 2nd September 1891.

whether Section 43 A* was sufficiently comprehensive and covered all the charges which were likely to be imposed in respect of either the wet or dry docks. The trustees intimated, in reply,† that they approved of the proposed sections with the following alteration in Section 43A which was necessary to cover all the articles supplied on hire by the Board for use at the docks, *viz* :—

"Expunge the words following the phrase 'in the possession of the Board' and substitute the following, 'and for services which the Board renders to and for gear, tackle, tools, instruments, utensils, staging or material supplied by the Board for the purposes of any vessel using, or any person working in, any such dock.'"

The Remembrancer of Legal Affairs having agreed to the alteration proposed by the Trustees, it was ordered to be inserted in the Bill to amend the Act.

* The Board may also frame a scale of charges to be levied for permission to use and for the use of any dock in the possession of the Board and for services which the Board renders and for the use of stages, stage ropes and other things which the Board supplies to vessels using any such dock.

† Letter No. 4385, dated 6th November 1891.

Section 8.—Bringing Section 44 of the Bombay Port Trust Act, 1879, into conformity with Section 143 of the Army Act 1881 (which exempts troops from the payment of tolls,) and authorizing Government to call for, and remunerate on terms to be agreed upon with the Board, certain services and accommodation which the Board is in a position to afford at the time of the landing and embarking of troops.

In July 1888, the Government of India * invited this Government to consider, in communication with its legal advisers, how far Section 44 of the Bombay Port Trust Act, 1879, and Section 45 of the Karáchi Port Trust Act, 1886, were consistent with Section 143 of the Army Act, 1881, and they suggested that should legislation be considered necessary for the purpose of bringing the local Acts into conformity with the Army Act, 1881, it should be undertaken in the Bombay Council as soon as possible.

* Letter No. 1700 C. dated 26th July 1888.

2. Section 143 of the Army Act, 1881, (following in this respect Section 139 of the Army Discipline and Regulation Act, 1879, which came into force in India on 1st March 1880) enacts that all officers and soldiers of Her Majesty's Regular Forces on duty or on the march, and their horses and baggage, shall be exempted from the payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay or landing place, * * demandable by virtue of any Act * * of the legislature in India.

3. Section 44 of the Bombay Port Trust Act (VI) of 1879, enacts that "the said †rates shall not be leviable in respect of any vessel employed by Government solely for the transport of troops nor in respect of the baggage or other effects of any troops landing or embarking at the port. In lieu thereof a toll shall be payable by Government to the Board on all troops and all the families of troops landing or embarking at Bombay at the rate of one rupee per head, and, if such troops and their families shall land or embark at any dock in the possession of the Board, at such additional rate as shall from time to time be determined by Government."

† *i. e.* the tolls, rates, fees, prescribed in Section 43 of the Port Trust Act for landing, shipping, wharfage, &c.

4. Section 45 of the Karáchi Port Trust Act of 1886 (VI of 1886) contains a similar provision as follows :—

"The tolls, dues, rates and charges prescribed under Section 43 * shall not be leviable in respect of any vessel employed by Government solely for the transport of troops nor in respect of the baggage or other effects of any troops landing or embarking at the Port.

i. e. the tolls, rates, fees, prescribed in Section 43 of the Port Trust Act for landing, shipping, wharfage, &c.

In lieu thereof a toll shall be payable by Government to the Board on all troops and all the families of troops landing or embarking at Karáchi at the rate of one rupee per head."

5. The Remembrancer of Legal Affairs having been requested to state whether legislation would be necessary to bring the sections of the Bombay and Karáchi Port Trust Acts above referred to into conformity with Section 143 of the Army Act, 1881, †replied that in his opinion legislation would be necessary for the reasons given by him. A copy of the Legal Remembrancer's letter is attached—*vide* Appendix D.

† Letter No. 887, dated 15th August 1888.

6. The Honourable Mr. Naylor in minuting on the papers observed that the Bombay Port Trust Act, 1879, which became law on 4th September 1879, was in force before the Army Act, 1881, exempted officers and soldiers from the payment of tolls, but that the English Statute rendered the levy of the toll on troops (but not on their families) illegal; and that as respects the Karáchi Port Trust Act, which became law on 8th February 1887, the enactment being in contravention of the English Statute was *ab initio* void so far as troops are concerned. Admitting the necessity for legislation as pointed out by the Legal Remembrancer, the Honourable Mr. Naylor wrote:—

"But what shall be the intent and extent of legislation ?

The toll on the families of troops does not offend against the English Act, but we could hardly maintain the toll on families when we take it off the officers and soldiers themselves. That would be contravening the spirit although not the letter of the English Act.

In the case of both the Bombay and the Karáchi Trusts, this toll on troops and their families was allowed by the Legislature, as the Acting Remembrancer of Legal Affairs points out, in compensation for the Trustees being expressly prohibited from levying their ordinary tolls, dues, rents, rates and charges, in respect of 'any vessel employed by Government solely for the transport of troops or in respect of the baggage or other effects of any troops landing or embarking at the port.'

"The remedy which sems to me the most simple and the most reasonable is, therefore, to repeal both this prohibitive and also the compensatory clause. The Trustees will then be at liberty to charge Government, as they do private persons, the tolls, dues, rents, rates and charges leviable

by them under Section 43, Bombay Act VI of 1879, and Section 43, Bombay Act VI, 1886, respectively, but they will be subject to the right of exemption conferred by Section 143 of the Army Act, 1881, on all officers and soldiers throughout the British Empire.

"In other words I would propose to repeal Section 44, Bombay Act VI, 1879, and Section 45, Bombay Act VI, 1886, and to add to Section 43 of each of the Acts a clause saying that the power that section confers is subject to the provisions of Section 143 of the Army Act, 1881.

"I think that the Trustees of each of the two ports should be asked their opinion with regard to this proposal, and also that the Military Department should be consulted."

7. The Chairman, Bombay Port Trust, and the Commissioner in Sind were addressed accordingly.

8. The Secretary, Bombay Port Trust, in *reply observed that the Army Act, 1881, exempts officers and soldiers only from the payment of tolls, whereas the payment guaranteed by the Bombay Port Trust Act is for *families* as well; that the number of women and children and of followers other than soldiers attached to troops is very considerable, and that nothing in the Army Act, 1881, is calculated to affect payments made on account of them. As to Section 44 of the Bombay Port Trust Act being inconsistent with the Army Discipline Act, the Secretary, Bombay Port Trust, pointed out that a reference on the subject was made in 1881, when Government †decided that it appeared equitable to make good to the Port Trust the tolls or charges leviable under Act VI of 1879 which, under the Army Discipline and Regulation Act of 1879, subsequently introduced, they are debarred from levying, and accordingly ordered the Commissariat Department to pay to the Port Trust all charges to which the Army Discipline and Regulation Act applied. The Secretary, Bombay Port Trust, then proceeded to show that special arrangements are made by the Port Trust in providing accommodation, &c., at the Sassoon Dock as well as at the Prince's Dock (when an expedition is being fitted out) to facilitate the embarkation and disembarkation of troop and in conclusion observed as follows:—

* Letter No. 4721, dated 8th November 1888.

† G.R. No. 369, dated 23rd June 1881.

"If Government are now of opinion that it is essential to have the Port Trust Act brought into strict conformity with the English Army Discipline Act, the Trustees have no objection to offer so long as their revenue is not substantially affected.

"The average payments (of tolls) made by Government in connection with the landing and em-

barking of troops at Sassoon Dock during the past five years have been Rs. 41,607 and at Prince's Dock Rs. 12,475, besides an average of Rs. 6,080 for horses, and the only way that occurs to the Trustees to fairly settle the question is for Government to undertake to pay some such sums annually in lieu of the toll hitherto paid. Any special questions affecting the use of *land, sheds, &c., not hitherto covered by the toll to be separately decided upon as they arise."

*Note.—In addition to the toll of Re. 1 per head paid by Government on troops landed and embarked, the following payments are made to the Trust:—

1. Rs. 7,750 annually for ground-rent, rent of sheds and sidings taken up at Sassoon Dock in connection with the landing and embarkation of troops.
2. A charge of Re. 1 per head for embarking and disembarking at Prince's Dock during expeditions.

9. As regards Karáchi the Commissioner in Sind submitted a letter† from the Chairman, Karáchi Port Trust, stating as follows:—

†No. P. T.—3675, dated 7th December 1888.

1st. That the Port Trustees fully recognize the necessity for assimilating the Karáchi Port Trust Act with the Army Act, 1881, and are not desirous of raising any objection provided the revenues of the Trust are not affected thereby, and that the present payments for the *families* of troops will be continued.

2ndly. That the amount received during the year 1887-88 on account of toll on troops amounted to Rs. 5,221.

3rdly. That a fixed sum be paid to the Port Trust annually for the use of berths at the wharves during the trooping season, a special rate or scale being adopted under special circumstances.

4thly. That Section 45 of the Karáchi Port Trust Act be made applicable to all military and other Government servants not travelling on duty, and all followers, who may be passengers by any Government vessel or hired transport, making use of any wharf.

10. The Controller of Military Accounts, who was consulted, ‡reported that the average yearly payment made to the Bombay Port Trust on account of tolls on troops and cattle of the three Presidencies during the five years ending 1887-88 amounted to Rs. 60,304, which sum included payments made during *expeditions* and agreed approximately with the annual average given by the Secretary, Bombay Port Trust; and that the sum paid by

‡ No. 158, dated 5th February 1882.

Government on account of tolls on troops landed and embarked at Karáchi during the 12 months from June 1887 to May 1888 under the Karáchi Port Trust Act, which came into force on 1st April 1887, was Rs. 5,856. The Controller of Military Accounts remarked:—

"I have no observations to offer on the remarks of the Port Trust authorities at Bombay and Karáchi. I would venture to remark, however, that the section of the Army Act of 1881 appears to be designed to exempt officers and soldiers from payment of tolls leviable on piers, wharves, &c., while the fee of one rupee per head is a payment which the Government * undertook to make from the State revenues as a composition for the loss that would accrue to the Port Trust through the operation of the Army Act and by way of repayment for the services and other advantages received by the State from those bodies."

* G. R. No. 369 of 23rd June 1881.

11. The Resolution of 1881 above alluded to, and to which attention is drawn in the letter from the Secretary, Bombay Port Trust, was passed under the following circumstances: In April 1881, the Port Trustees, Bombay, represented the loss to the revenues of the Trust caused by the operation of Statute 42 and 43 Victoria (Chapter 33, Section 137, Army Discipline and Regulation Act, 1879) exempting officers and soldiers from the payment of tolls on themselves, their horses and baggage, for the use of wharves in India, and they requested, as it could not be intended that the Trust should lose any portion of its revenue, that the Commissariat Department be authorised to pay the Trust all charges to which the Statute applied. The Government Solicitor reported:—

"The question whether or not Government should make good to the Port Trust the tolls or charges which, under the above provision of the legislature, they are debarred from levying under Bombay Act VI of 1879, does not appear to me to involve any point of law;"

and it was, he said, a matter entirely for the consideration of Government whether or not to comply with the request made by the Trustees. Thereupon Government Resolution No. 369 dated 23rd June 1881, (which runs as follows) was passed:—

"It would appear to be equitable to make good to the Port Trust the tolls or charges leviable under Act VI of 1879, which, under the Army Discipline and Regulation Act of 1879, subsequently introduced, they are debarred from levying. His Excellency the Governor in Council is therefore pleased to order that the Commissariat Department shall pay to the Port Trust all charges to which the Discipline and Regulation Act applies,

with the reservation as detailed in *paragraph 3 of report No. 878 from the Controller of Military Accounts.

"2. These proceedings of Government to be submitted for the information of the Government of India."

Viz. that payment shall be made only for those horses whose owners receive horse allowance either as a distinct item or included in their pay from Government, and who are required to be mounted on the duty on which they may be proceeding.

12. The Honourable Mr. Naylor in his minute referred to in paragraph 6 *ante* wrote, as regards this Resolution, as follows:—

"The admission in Government Resolution No. 369 of 23rd June 1881, Marine Department, that it is equitable to make good to the Bombay Port Trust the tolls which the English Statute debarred it from levying, appears to me to be an unfortunate one. The several local bodies concerned, not the Government, should, I think, suffer by a general exemption of this nature conferred by the Imperial Parliament, and I would endeavour to enforce this view now."

13. In submitting the replies received from the Bombay and Karáchi Port Trust authorities to the Honourable Board, the Secretary to Government, Marine† Department, remarked:—

†Secretary's note dated 9th March 1889.

"It seems to have been clearly established that legislation is necessary to bring Section 44 of the Bombay Port Trust Act, 1879, and Section 45 of the Karáchi Port Trust Act, 1886, into conformity with Section 143 of the Army Act, 1881.

"With regard to the Honourable Mr. Naylor's remarks that the several local bodies, and not the Government, should suffer by the exemption of payment of tolls by troops as authorized by the Army Act, a perusal is invited of letter No. 4721, dated 8th November 1888, from the Secretary, Bombay Port Trust, amongst these papers, in which the Port Trust make out a very good case and show that they are in equity entitled to compensation for the expenses they have incurred and do incur annually to facilitate the embarkation and disembarkation of troops; but it is a question for consideration whether the amount hitherto paid, at the rate of Re. 1 per head, is not in excess of what might be regarded as fair compensation for service rendered and expenditure incurred, bearing in mind that the Army Act exempts troops from paying any tolls."

14. The Honourable Sir R. West, minuting on the papers, observed:—

"The agreement entered into with the Port Trustees of Bombay extends over much wider ground than the section of the statute. Although one part of the consideration for the contract embodied in our Act may be bad, there are other parts of the consideration that are good, and the law was, I think, made in view of the statute of 1879 containing a provision similar to that in the statute of 1881. It seems a reasonable compromise, and I should think it ought not to be disturbed.

"As to Karáchi, the local law as to that Port was made in full view of the Imperial Statute.

It does not contravene the Imperial Statute, as instead of an aggregate of tolls on vessels, &c., it merely substitutes an easy mode of computing the payment to be made for all services, and directs payment on that basis.

"I think we had better leave things as they are. As to Bombay the honour of Government seems to require it."

His Excellency the late Governor, Lord Reay, wrote as under:—

The principle embodied in the Aden Port Trust Act, Section 40 (3) is undoubtedly the right one, and there is no reason why in Bombay and Karáchi it should not be enforced. I think that the Port Trutees should be made to accept a similar provision, but that we should take into account that hitherto we have waived the application and therefore give compensation on a gradually reduced scale, leaving us after some years absolutely free. The Bombay Port Trust has met with so much favour from Government that it may well be expected to meet us half way."

And the Honourable Mr. Richey minuted as follows:—

"The case seems to be that the section of the Bombay Act as it stands has been over-ridden by the Imperial Statute, but that Government have in turn over-ridden the operation of the latter by a voluntary payment. There is no need to legislate unless we intend to cancel an obligation, which we admitted the Government of India assenting, to be equitable. * * *

"I concur with the Honourable Sir R. West, that we may leave matters as they are. But it might be more convenient to compound as the law at present is in one case certainly over-ridden and in the other somewhat doubtful for an annual payment in lieu of head charges. This would have to be made irrespective of special cases of expeditions and with, therefore, a maximum number to be covered by the yearly charge. * * "

With reference to the above, His Excellency the late Governor minuted as follows:—

"We cannot, I think, assume that we are bound to pay *in perpetuo* to the Port Trust the figure we now pay, especially if we consider that the Port Trustees are continually reducing their rates. We might remind them of this wise policy and ask them to let Government have a share in it by granting to Government reductions on the same scale.

"After having settled with Bombay, we might reconsider the Karáchi terms also. There is nothing to restrain Government from amending the Bombay and Karáchi Acts in the sense of the Aden one."

and the Honourable Sir R. West, as under:—

"The Port Trustees who, as their prosperity increases, reduce their charges to the public

from time to time, may fairly be asked, I think, to make a corresponding reduction (as extra grant of one-third or one-fourth of the contract sum) in favour of the public through Government. The existing rates were based on estimates, which in practice, have turned out needlessly high."

15. A letter* was then addressed to the Chairman, Bombay Port Trust, in the sense of the foregoing minutes by the Honourable Board. It was stated—

*No. 103, dated 1st April 1889.

(1) that in respect of the levy of tolls on troops, &c., the principle embodied in the Aden Port Trust Act, 1888, Section 40 (3) was the correct one.

(2) that while Government were not disposed to discontinue altogether the payments thereto made to the Trust under the Bombay Port Trust Act, 1879, they considered that the time had arrived for reducing the rates payable by Government, which were needlessly high, and further

(3) that Government expected to share in the prosperity of the Trust by being allowed a reduction in the payments hitherto made.

16. To this the Secretary, Bombay Port Trust, replied† as follows :—

† Letter No. 218, dated 16th May 1889.

(1) that the Aden Port Trust Act not only covered the exemption of officers and soldiers under Section 143 of the Army Act, 1881, but went further by exempting Military and Naval Stores and vessels carrying them from payment of dues to the Aden Port Trust.

(2) that the circustances of the Aden and Bombay Port Trusts were dissimilar, inasmuch as Government having made over to the Aden Port Trust *without charge* whatever property it possesed, they had a right to impose on that Trust any conditions they pleased, whereas in Bombay the Trust having been started by Government with a heavy debt, Government have a solemn engagement to pay the charges now levied from them under the Port Trust Act.

(3) that the Army Act, 1881, seemed intended to prevent soldiers being charged any toll to which ordinary passengers are liable, but that in Bombay ordinary passengers are allowed to land and embark *free* of *charge*, so that the arrangement with Government was quite a special one entered into under peculiar circumstances, and the payments were made in return for special facilities afforded.

(4) that the Sassoon Dock, which was practically *maintained for the needs of Gvernment, cost 20 lákhs, on which the Trust paid interest at 4 per cent.; that the net receipts derived from this dock during the five years ended March 1888 was Rs. 4,02,312, while the interest paid by the Trust on the dock during the same period amounted to 4 lákhs; and that if, instead of buying the Sasoon Dock for 20 lákhs and making it over to the Port Trust, Government had bought the dock on their own account and let out to the Trust all the land, sheds, warehouses and Bandar rights they themselves did not require for trooping purposes, they would have been practically in the same position as far as money payments are concerned as that in which they now are.

* At Sassoon Dock, the land, sheds, siding and Bandar are entirely in the possession of Government during the trooping season.

For all the above reasons, besides the additional financial responsibilities which the Trust had to face, the Trustees were unable to meet the wishes of Government for a reduction in rates in the manner proposed. They, however, made the following proposals which, they hoped, would meet with acceptance:—

I.—The average receipts from Government at the Sassoon Dock were stated to amount to Rs. 48,750 per annum, and the Trustees proposed to reduce their rates all round *20 per cent.* instead of *18·8 per cent.*, thus reducing the amount payable by Government from an average of Rs. 48,750 to *Rs. 39,000* per annum. The Trutees remarked:—

"The manner in which any new arrangement should be given effect to remains to be considered. Government appear to be of opinion that Section 44 of the Port Trust Act, 1879, and the Army Act, 1881, are incompatible with each other, and it might therefore be desirable to strike out Section 44 of the Port Trust Act and to make the payment now suggested (Rs. 39,000) matter of agreement between Government and the Board as a simple payment made in return for facilities afforded by the Trust to Government in the conduct of their trooping operations."

This was as regards the Sassoon Dock only.

II. As respects the wet docks, the Trustees' proposal was as follows:—

"The wet docks are only used by Government in cases of emergency, and if Government are of opinion that the rate† per head should be abolished, probably the most convenient method of arranging both for Government and the Trust will be to accept the principle that seeing a troopship will take the place of a merchant vessel, a *fixed*

† *Note.*—The rate now paid by Government is Rs. 2 per head, plus ordinary wharfage and other charges on stores.

amount based upon the receipts from merchant vessels be paid by Government for each troopship, *irrespective of the number of troops or quantity of stores* she may carry. The same wharf and shed space would be allotted to a troopship as would be allotted to a merchant ship's cargo, and by this method, Government would receive the benefits of any reduction in rates that might from time to time be made. But inasmuch as in fitting out an expedition many ships would carry little else than troops and their baggage in connection with the embarking or shipment of which the Trust would incur little expense, and inasmuch as the ships would, on the average, occupy a berth for a less time than a cargo steamer, a *fixed deduction* of *one-half* might be made from the average charge made against a cargo steamer."

17. The Honorable Sir R. West, with reference to the above, minuted as follows :—

"I think the terms offered by the Port Trustees are very reasonable. The payment made and to be made in aggregate sums for an aggregate of services is not, in my opinion, illegal, even if among the services are some which under the Imperial Statute could be exacted gratis."

* * *

"I do not think it is necessary to amend the Port Trust Act. It would be preferable to make an agreement on the terms now proposed for a term of five or seven years. If that is done, we can use it as a reason for demanding more easy terms at Karáchi. Legislation, to upset the terms of a bargain, is very invidious, except in case of absolute necessity."

And His Exellency Lord Reay wrote as under :—

"As the Trustees themselves approve of an amending Act and of repeal of Section 44 of Bombay Act VI of 1879, it strikes me that this would be desirable, as also to repeal Section 45 of Bombay Act VI of 1886 to make the new bargain not illegal and to bring our laws in harmony with an Imperial Statute (Section 143 of Army Act, 1881). The repeal should, however, be limited to troops, and families of troops, their horses and baggage.

"The contention in paragraph 4 (of the Port Trust's letter) is absurd. If the property transferred is valued, the Bombay Port Trust are in a much better position than either Aden or Karáchi. This must at once be pointed out."

* * *

Whereupon the Honourable Sir R. West wrote as follows :—

"The Port Trustees do not express any approval of an amending Act. They merely intimate that they are willing to yield to the view of Government on terms of a new agreement being made which shall be held as binding as if embodied in an Act of legislation."

"My view of the Army Act, Section 143, is that it prevents the levy of any toll on an officer or soldier for landing, &c. But that does not at all prevent a bargain whereby Government agrees to

pay for an aggregate of services embracing many particulars, besides permission to land on a basis of so much per head of the troops and their families landing and leaving. This is, I see, substantially the view taken in by the Remembrancer of Legal Affairs. There seems to be no prospect of the sum properly payable by Government ever falling below Re. 1 a head, and it may be undesirable, in the interests of the Provincial revenues, that the considerable item of the Port Trust's income arising from fees for troops and troop-ships should be placed wholly at the discretion or under the orders of an authority more specially interested in other objects than in the welfare of the Port or the financial comfort of the Bombay Government.

"At the same time, although I consider that legislation is not necessary in the sense of being indispensable, yet I believe it can be shaped so as not to be seriously mischievous. In the Bombay Port Trust Act and in that of Karáchi also, the clause as to tolls might be replaced by one to this effect:—

"'But if such troops or their families or their baggage or effects shall be landed or embarked at any Dock in the possession of the Board, payment shall be made for the services, and accommodation furnished by the Board in that behalf on such terms and for such periods as shall from time to time be determined by Government.'

"Under such a clause the agreement would be made for five or seven years on some such terms as the Trustees propose, and once made, it would survive an ordinary repeal of the Act.

* * * *

"I agree as to the unsoundness of the Trustees' argument as to property. They and other Port Trustees are vested with property as against certain liabilities, and they must alike accept the conditions of their own existence as a starting point for all discussion."

18. With reference to the amending clause suggested in the latter portion of the above minute by the Honourable Sir R. West, a reference was made to the Remembrancer of Legal Affairs, who submitted a revised draft of Section 44 of the Bombay Port Trust Act, in which a clear distinction was made between the services which the Board of Trustees are bound to render to troops, &c., *gratis*, in conformity with Section 143 of the Army Act, and the *additional* services and accommodation they are to perform and supply on receipt of payment from Government. This draft having been approved by the Honourable Board, the Port Trustees, Bombay, were addressed as follows (letter No. 229, dated 3rd August 1889):—

"I have laid before His Excellency the Governor in Council the letter from the Secretary, Bombay Port Trust, No. 2118, dated 16th May 1889, regarding the charges levied by the Trustees of the Port on account of the landing and embarking of Troops in Bombay.

"2. In paragraphs 3 and 4 of that letter it is pointed out (with reference to the opinion expressed in my letter No. 103, dated 1st April 1889, that the principle embodied in the Aden Port Trust Act, 1888, Section 40 (3), is the correct one) that there are essential differences between the circumstances of Bombay and Aden, and that whereas Government have made over property to the Aden Port Trust without charge, the Bombay Port Trust was launched with a debt of 250 lákhs. This argument, I am to observe, is unsound and cannot for a moment be entertained. If the property transferred is valued, it will at once be seen that the Bombay Port Trust is in a much better position than either Karáchi or Aden. I am to remark, moreover, that the Bombay and other Port Trustees are vested with property as against certain liabilities, and they must alike accept the conditions of their own existence as a starting point for all discussion.

"3. With regard to the payments to be made in future, His Excellency the Governor in Council is inclined to accept the proposals made in paragraphs 12 and 15 of the letter under reply, and I am desired to enquire whether the Trustees are willing to enter into an agreement based on those proposals for a fixed period of say five or seven years.

"4. To legalize the new arrangement, His Excellency the Governor in Council proposes to amend Section 44 of the Bombay Port Trust Act 1879, as follows:—

"'The said rates shall not be leviable in respect of any vessel employed by Government solely for the transport of troops, nor in respect of the baggage or other effects of any troops landing or embarking at the Port:

"'Provided that in respect of all such vessels or troops, their families, their baggage or their effects, the Board shall, in addition to their duties in the landing and embarking of any of the same, perform and supply all such services and all such accommodation as may from time to time be required by Government, and shall receive payment for all such services and accommodation on such terms and for such periods as may from time to time be determined by Government.'

"I am directed to request the opinion of the Trustees on this amendment."

19. To this the following *reply was received:—

* Letter No. 4201, dated 3rd October 1889.

"2. The Trustees respectfully maintain the justice of the argument which, in the 2nd paragraph of your letter is characterized as unsound, but having no desire to prolong unnecessarily the discussion on this point, would merely remark that no one could compare Section 59 of the Bombay Port Trust Act of 1873 and Sections 43 and 44 of that of 1879 with Sections 40 and 41 of the Aden Port Trust Act without seeing the vast difference between the conditions under which, with regard to this question of payment for fees for troops, the two Port Trusts commenced, and have continued, their operation.

"3. With regard to the proposal in paragraph 4 to amend Section 44 of the Bombay Port Trust Act, 1879, I am to point out that the proposed proviso (the drafting of which evidently requires revision) would bind the Trustees to do and supply everything that Government might require and to receive such payment as Government might from time to time determine, without the Trustees having the slightest voice or option in the matter, and against such a one-sided arrangement the Trustees must record an emphatic protest.

"4. The trustees would propose that instead of the proviso being as shown in your 4th paragraph it should run as follows:—

> "Provided that the Board shall receive such payment far all services rendered and accommodation supplied to all such vessels or troops and to the families, baggage and other effects of such troops as may from time to time be jointly determined, in advance by Government and the Trustees. Should Government and the Trustees disagree on any occasion as to the amount of payment to be so determined, it shall be fixed by a person appointed in this behalf, on each such occasion, by the Governor in Council with the concurrence of the Trustees. The cost of such reference shall be borne in equal shares by Government and the Trust without regard to the result of such reference.

"5. Should this change in the form of the proviso be accepted by Government, the Trustees will be willing to enter into an agreement such as that referred to in your 3rd paragraph, and for a term of either five or seven years, as Govment may prefer."

20. Thereupon the Port Trustees were informed* that His Excellency the Governor in Council proposed to add the words "in conference with the Trustees" to the amendment of Section 44 of the Bombay Port Trust Act embodied in paragraph 4 of Government letter No. 229, dated 3rd August 1889 (para. 18 *ante*), and enquiry was made whether the amendment in question, with the above addition, was accepted. The Trustees, in reply,† having intimated their inability to accept the proposal, which they said would be very far from meeting their requirements as expressed in their letter No. 4201, dated 3rd October 1889, the Honourable Sir R. West proposed to discuss the matter personally with the Chairman, Bombay Port Trust (Colonel Merewether). This was agreed to by His Excellency the Governor, and on the 4th January 1890 the Honourable Member wrote as follows:—

*Letter No. 307, dated 17th October 1889.

†Letter No. 4692, dated 7th November 1889.

"I have had a conversation with Colonel Merewether. He has agreed to lay our proposed section with his recommendation before the Trustees, subject only to the introduction of the word 'reasonable' between 'such' and 'services.' To this I do not see any objection. The addition will free the clause from its very arbitrary sound. The words as to conference are to be retained.

"I think the matter should now be referred back to the Trustees with an expression of Government's opinion that with the addition of 'reasonable', the clause goes as far as is consistent with the Army Act, and saying that Government are anxious to have the matter settled and get the Act passed in order to obtain a legislative basis for the terms which they propose to arrange for five years with the Trustees on the footing of the proposals made by the Trustees themselves. There is every desire on the part of Government to deal with the Port Trust in a spirit of perfect equity and to guard its interests so far as is compatible with obedience to the letter and the spirit of the Imperial Statute."

21. The Port Trustees were addressed accordingly and on the 22nd January 1890 the following letter* was received from the Secretary, Bombay Port Trust :—

* No. 330

"In reply to your No. 3-G, dated 11th instant, I am to express the great regret of the Trustees that while agreeing to the insertion of the word 'reasonable,' they are unable to accept the amendment as therein proposed; but I am directed to suggest the following alterations and addition which would satisfy the requirements of the Trustees and which it is hoped will also meet the views of Government.

"2. *Proposed alteration No. 1.*—For the words 'such services and accommodation' to substitute duties performed, 'services rendered' and 'accommodation supplied.'

"*Proposed alteration No. 2.*—For the words 'be determined by Government in conference with the Trustees' to substitute 'be determined by Government in concurrence with the Trustees.'

"3. It is understood that Government consider that objection might be taken to the provision for reference to arbitration proposed by the Trustees in their No. 4201, dated 3rd October last, on the ground that it would leave the decision of a question affecting Government to a private individual, and, in order to get over that objection, I am to propose that provision be made for reference to either the High Court or to the Chief Judge of the Small Causes Court.

"4. If this be done, a proviso might be added beginning thus—

> "In the event of no such terms of payment being fixed or in the event of a disagreement between the Government and the Trustees as to the proper amount of payment to be so fixed,' &c.,

—"provision being made for reference to the High Court or to the Chief Judge of the Small Causes Court, as Government may prefer; and for the cost of such reference being borne in equal shares by Government and the Trust without regard to the result of such reference.

"5. In paragraph 3 of the Trustees' No. 4201, dated 3rd October last, reference was made to the drafting of the proposed proviso requiring revision, and I am to suggest that it might be well to make the following alterations.

"For the words 'their families, their baggage or other effects,' to substitute 'the families, bag-

gage or other effects of the troops'; and for the words, 'perform and supply all such reasonable services and all such accommodation' to substitute 'peform all such reasonable services and supply all such reasonable accommodation.'

"6. If these proposals are approved by Government, the amendment will run:—

"'Provided that in respect of all such vessels or troops, the families, baggage or other effects of the troops, the Board shall, in addition to their duties in the landing and embarking of any of the same, perform all such reasonable services and supply all such reasonable accommodation as may from time to time be required by Government, and shall receive payment for all duties performed, services rendered and accommodation supplied on such terms and for such periods as may from time to time be determined by Government in concurrence with the Trustees. In the event of no such terms of payment being fixed or in the event of a disagreement between the Government and the Trustees as to the proper amount of payment to be so fixed, &c., as to reference and payment for such reference as above proposed.

"7. I am to add that if the above proposals are accepted by Government, the Trustees approve of the term of five years for the arrangement, as proposed in your No. 3-G. of the 11th instant."

22. With reference to this, the Honourable Sir R. West remarked:—

"* * The proviso, as the Trustees now propose it, would entirely defeat the purpose in view. It would entitle the Port Trust to payment for 'duties in landing and embarking' which under the Statute must be rendered gratis. It would by exacting the 'concurrence' of the Trustees deprive the local Government of the discretion which it would have had no motive to use injuriously to the Trust. As the Trustees have taken up this position, we ought, I think, now to proceed with our amending Act without further negotiation."

23. Government thereupon issued the following Resolution (No. 49, dated 22nd February 1890):—

RESOLUTION.—After a careful consideration of these papers, His Excellency the Governor in Council has decided to amend Section 44 of the Bombay Port Trust Act, 1879, and Section 45 of the Karáchi Port Trust Act, 1886, to the following effect, and the Remembrancer of Legal Affairs should be requested to prepare and submit, as early as possible, drafts of Bills for amending the Acts in question:—

"The said rates shall not be leviable in respect of any vessel employed by Government solely for the transport of troops, nor in respect of the baggage, or other effects, of any troops landing or embarking at the Port,

"Provided that in respect of all such vessels or troops, their families, their baggage, or their effects, the Board shall, in addition to their duties in the landing and embarking of any of the same, perform and supply all such reasonable services and all such accommodation as may from time to time be required by Government and shall receive payment for all such services and accommodation on such terms and for such periods as may from time to time be determined by Government in conference with the Trustees."

2. The Government of India to be informed.

24. With reference to the above Resolution, the Secretary, Bombay Port Trust, in March 1890, submitted* copy of a Resolution by the Port Trustees protesting against the amendment of Section 44 of the Bombay Port Trust Act as decided by Government, and requesting that an expression of their regret at the action of Government and their protest might be laid before the Legislative Council when the proposed amendment of the Act was brought before that body. By Government Resolution No. 84, dated 22nd March 1890, the Port Trustees were informed that when the Bill amending the Bombay Port Trust Act had been published it would be open to them to send any communication they might wish concerning it to the Legislative Department, but that as the Bill had not yet reached that Department, their protest was somewhat premature.

* Letter No. 1049, dated 6th March 1890.

APPENDIX D.

No. 887 OF 1888.

FROM

H. BATTY, ESQUIRE,
Acting Remembrancer of Legal Affairs;

To

THE SECRETARY TO GOVERNMENT,
Military Department.

Poona, 15th August 1888.

SIR,

With reference to your memorandum No. 1199* G. I. of 13th August 1888, I have the honour to report that in my opinion legislation would be necessary to bring Section 44 of the Bombay Port Trust Act, 1879, and Section 45 of the Karáchi Port Trust Act, 1886, into conformity with Section 143 of the Army Act, 1881.

* Herewith returned with its enclosures.

2. My reasons are as follows:—Section 143 of the Army Act, 1881, exempts all officers and soldiers of Her Majesty's regular forces on duty or on the march, and their horses and baggage, &c., from duties and tolls on embarking and disembarking, &c.

3. Under Section 59 of the Bombay Port Trust Act, 1873, a toll of one rupee per head was payable by Government on all troops (and their families) landing or embarking at Bombay.

4. That liability was imposed directly *tolidem verbis* as a *toll*.

5. But in the Bombay Port Trust Act, 1879, Section 44, this liability was not re-imposed as a toll directly due on account of the landing or disembarking of troops, but *in lieu* of the power given to the Board to frame a scale of tolls under Section 43 of that Act (Bombay VI of 1879) in respect of goods landed, shipped, wharfed, &c., and in respect of permission for vessels, &c., to approach and be alongside wharves, docks, piers, &c.

6. Section 44 of Bombay VI of 1879 was apparently not so much intended as a direct toll on the landing or embarkation of troops as a basis for calculating the compensation to be given to the Board for withholding from them the power to levy tolls in respect of the vessels and baggage therein referred to.

7. Section 45 of the Karáchi Port Trust Act seems to have been framed with similar intent.

8. The baggage of troops became exempt from liability to tolls under Section 137 of 42 and 43 Vic., c. 32 (the Army Discipline and Regulation Act, 1879) and Section 143 of the Army Act, 1881.

9. The toll, therefore, payable under Section 44 of the Bombay Port Trust Act, 1879, and Section 45 of the Karáchi Port Trust Act, 1886, could now be regarded as consideration only for such tolls as the respective Boards might levy under Section 42 (*b*) of Bombay VI of 1879, and under Section 43 (*a*), (*b*), and (*c*) of Bombay VI of 1886, *i. e.*, in respect of *vessels* and not in respect of *baggage*.

10. If this view be correct, *viz.*, that the tolls leviable per head on troops and their familes are merely a form of compensation for withholding certain powers from the Board, it would, I think, be very doubtful whether Section 143 of the Amy Act, 1881, would by itself dispense with the necessity for legislation in order to relieve Government from this liability, which is a liability arising not so much in respect of the landing and disembarking of troops, as in respect of other conveniences and advantages supplied by the Board.

11. Under Section 43 of the Bombay Port Trust Act, 1879, and Section 44 of the Karáchi Port Trust Act, 1886, the Boards alone are invested with power to initiate remissions of tolls leviable under Section 43 of each Act, and there is no power given to the Boards even to remit the tolls payable by Government per head on the landing and embarking of troops.

12. For these reasons, I think, Section 44 of the Bombay Port Trust Act, 1879, and Section 45 of the Karáchi Port Trust Act, 1886, cannot be set aside without legislation.

I have, &c.,
(Signed) H. BATTY,
Acting Remembrancer of Legal Affairs.

VI

Section 9.—Banking of Port Trust moneys.

In reporting on the Port Trust Budget Estimate for 1891-92, the Accountant General in his letter No. $\frac{\text{O. A.}}{36041}$, dated 13th March 1891, stated as follows :—

"I understand that since the formation of the Trust, its funds have been placed in deposit or current account with the Bank of Bombay, as the Bank conducting the business of Government, and to some extent under the supervision of Government. In January last, owing to some misunderstanding the Trustees' account was withdrawn from the Bank of Bombay, and the bulk of the money at credit was placed in current account in certain of the local Exchange Banks with the view, I conclude, of earning a higher rate of interest than could be obtained from the Bank of Bombay. There is no provision in the Act directing the Trustees of the Port of Bombay to bank with the Presidency Bank, although the Karáchi Port Trustees and the Bombay Municipal Corporation are compelled, by law to bank exclusively with the Bank of Bombay; but it is, in my opinion, doubtful whether it is advisable for the Port Trustees to keep their funds in any other than the Presidency Bank. The authorities of the Bank of Bombay have already addressed me on the subject. I think it is probable that the misunderstanding which led to the withdrawal of the Trustees' account can be settled amicably, but if the offorts, now being made towards this end, fail, I will address Government separately on the subject."

2. With reference to these remarks the following explanation was given by the Secretary, Bombay Port Trust, in his letter No. 1147, dated 23rd March 1891 :—

"7. With regard to the withdrawal of the Trustees' Deposit Account from the Bank of Bombay, undersigned is directed to state that this was done, not because more favorable rates were obtained from other Banks, but because the Bank of Bombay suddenly declined to allow any interest on the account, although the custom is to allow interest on such accounts and the Bank of Bombay has itself since 1883 allowed the Trust 2 per cent. on the minimum monthly balance.

"8. Endeavours were made to get the authorities of the Bank of Bombay to continue this arrangement but were rejected, and other Banks having offered to open accounts on even better terms, namely 2 per cent., on the daily balance, the bulk of the Trustees' moneys was withdrawn from the Bank of Bombay and distributed amongst the Banks noted below :—

Oriental Bank.
National Bank.
Chartered Bank.
Chartered Mercantile Bank.
Hongkong and Shanghai Bank.
Agra Bank.

"The fact that a sum of Rs. 12,407 accrued to the Trust in 1890 in the shape of interest on their current account under the arrangement with the Bank of Bombay and that Rs. 15,000 at least is expected to be realized in the financial year 1891-92 under the new arrangement

show the importance of the question to the Trust.

"9. The Trustees have the opinion of Counsel that as no particular Bank is mentioned in the Port Trust Act, they have a discretion vested in them to select the Bank or Banks in which to deposit their current funds, and the necessity for the possession by the Board of such discretionary powers has been made manifest by the recent action of the authorities of the Bank of Bombay."

3. On this the Accountant General observed :—

"I beg to state that it seems unlikely that an agreement between the Trustees and the Bank of Bombay regarding the Trustees' account will be arrived at. I therefore beg to forward copy of a letter*, dated 27th January 1891, from the Secretary and Treasurer, Bank of Bombay, to my address on the subject for such orders as Government may consider necessary. I think it would have been better had the authorities of the Bank of Bombay given longer notice to the Port Trustees of their intention to reverse their long standing practice of allowing interest at a low rate on the Trustees' balances; such short notice, as appears to have been given, would certainly cause dissatisfaction, and would, to a small extent, upset the Trustees' Budget calculations. The Trustees, without doubt, must also have felt that though the condition of the money market, at the close of 1890, was such that the Bank of Bombay could not perhaps afford to pay them 2 per cent. interest on their current account, it was scarcely fair to deal with them on the basis of the dullest period of the year, and in any case that some proposal might have been made to allow a small rate of interest when the Bank rate was high, even if nothing could be allowed at other times.

* *Vide* Appendix E.

"5. On the other hand, while it appears to be the case as stated in my former letter to Government, see also paragraph 9 of the Secretary's report, that the Trustees are not bound by law to bank with the Presidency Bank, I think that it is to be regretted that the Trustees' balance was withdrawn from the Bank of Bombay and deposited with the Banks referred to in paragraph 8 of the Secretary's report, without a previous reference to Government on the subject, and I think that, even if no interest is allowed, it would be more satisfactory that the Trustees should bank with the Bank of Bombay than with any other Bank at the Presidency. If the balances held by the Trustees are of necessity so large that the non-receipt of interest means a serious loss of revenue, it would be better to arrange for the investment of a portion of the balances, until needed, in Government paper than to place the balance anywhere else than in the Presidency Bank."

4. The following Minute on the subject was written by the Honourable Sir R. West on the 8th April 1891 :—

"Considering how the Port Trust Board is made up and what influence may be brought to bear on it, I should think it very dangerous to recognize a scattering of its funds amongst the Exchange Banks. The same rule ought to be followed as at Aden and Karáchi. Investments in Government paper will yield the requisite interest on surplus funds."

5. The papers having been referred to the Financial Department, the Chief Secretary, in that Department, wrote the following note below a note by the Under Secretary proposing to say that that Department agreed with the above minute and recommended an amendment of the Act:—

"I think the Port Trustees should also be asked to reconsider their decision in this matter.

"The Port Trust being a quasi-Government institution in which Government have a large pecuniary stake, it is, I think, essential in the interests of Government as well as of the public at large, the Port Trust and the private holders of its debenture and loan stock, that the large floating balance of the Port Trust should be lodged where the greatest safety is to be had, and I think that there can be no doubt that the Presidency Bank, which is also the Government Bank, is the Bank which best fulfils this condition. I do not mean to say that the Exchange Banks are shaky, but it is an unquestionable fact that their business is far more risky than that of the Presidency Bank, that they are much more likely to sustain heavy losses and that as Banks they are not as safe as the Presidency Banks."

6. The Honourable Mr. Pritchard having concurred in these views, the following Resolution was, with approval of His Excellency the Governor, issued in the Marine Department (No. 135, dated 20th May 1891).

RESOLUTION.—His Excellency the Governor in Council is of opinion that it is very desirable that the moneys of the Bombay Port Trust should be lodged with the Presidency Bank, *i.e.*, the Bank of Bombay, and that the same rule should be followed in this respect as at Aden and Karáchi. In this view the necessary provision will be made in the draft amendment of the Bombay Port Trust Act, which is under reference to the Remembrancer of Legal Affairs.

7. Against this decision the Secretary, Bombay Port Trust, in September 1891, submitted a protest* by the Port Trustees, and requested that they might be allowed discretionary powers in regard to their banking account.

*Letter No. 3408, dated 4th September 1891, Appendix F. to this note.

8. The Secretary, Bombay Port Trust, in the last paragraph of his letter, wrote as follows :—

"27. I am to state that the Trustees are satisfied that Government have their interests as much at heart as the intererts of the Bank of Bombay; that the Trustees are willing to consider proposals for their moneys to be deposited as hitherto in that Bank, provided a reasonable rate of interest is paid; but if that is not feasible, they would ask that Government will either permit the present arrangement to stand or will consider

whether there are not other courses open for the employment of the Trustees' moneys in a manner that will be satisfactory to Government and profitable to the Trust, and I am to submit the following proposals for the consideration of Government, *viz.*:—

"(*a*) that Government will grant an abatement of interest on payments made quarterly in advance on account of the interest on the capital debt due to Government; and

"(*b*) give the Trustees power to lend money to Banks or other parties on Government paper or other public securities."

9. After obtaining the report* of the Accountant General on the Port Trustees' representation, the following orders were passed by Government (Government Resolution No. 36, dated 20th February 1892):—

* Appendix G to this Note.

RESOLUTION.—On a careful consideration of these papers, His Excellency the Governor in Council regrets his inability to modify the decision contained in Government Resolution No. 135, dated 20th May 1891, excepting in so far as to allow the Trustees to bank with the branches of the Banks of Bengal and Madras in Bombay, as well as with the Bank of Bombay itself, and with this view provision will be made in the draft Bill to amend the Bombay Port Trust Act, 1879 under consideration.

2. As regards the Trustees' proposal (*a*) cited in the preamble, they should be informed that a similar proposal was negatived by the Government of India in 1874 (Government Resolution No. 544, dated 23rd April 1874), but that that Government will be again addressed on the subject in view to sanction being accorded to the proposal now made.

3. With reference to proposal (*b*), the Port Trustees should be informed that it is viewed as being foreign to the object for which the Trust was created and as interfering unduly with the business of Banks and other mercantile houses, and that His Excellency in Council is unable to entertain it.

10. In regard to the proposal to allow the Port Trustees at Bombay to bank also with the local branches of the Banks of Bengal and Madras, it was brought to the notice of Government that the *Branch of the Bank of Bengal at Bombay did not receive money on current account* and that there was *no* Branch of the Bank of Madras in Bombay. Accordingly the section added to the Bill directing that the Port Trustees shall keep their moneys in the

bank which is at the time appointed to conduct the business of Her Majesty's treasury at Bombay, was allowed to stand.

11. The reply to the letter addressed to the Government of India under paragraph 2 of the Government Resolution No. 36, dated 20th February 1892, quoted above, was as follows :—

(Government of India's letter No. 1786, dated 27th April 1892).

"5. I am to say that the Governor General in Council, after careful consideration of the case, approves the orders of the Government of Bombay, declining to allow the Trustees to bank with other than the Presidency Banks and their branches at Bombay, or to empower them to lend money to Banks or other private parties.

"6. In regard to proposal (*a*), I am to say that the arrangement under which the instalments towards the repayment of the debt due to the Government were made payable yearly instead of half-yearly or quarterly was originally made as a concession to the Port Trust, and that it would therefore not be reasonable to expect the Government to allow discount on instalments paid before the customary time, unless the Government should derive such an advantage from the payments in advance as to make the transaction profitable to it. And I am to explain that the Government would not ordinarily be able to recover the amount allowed as discount by employing the addition to its balances caused by payments of the instalments in advance. I am therefore to express the regret of His Excellency the Governor General in Council that he is unable to sanction the proposal."

APPENDIX E.

To

R. LOGAN, Esq.,
Accountant General,
Bombay.

Bank of Bombay,
Bombay, 27th January 1891.

Sir,

I have the honour to enquire whether it is open to the Bombay Port Trust (a Government Institution) to deposit its monies elsewhere than with "the Bank for the time being appointed to receive Government dues at Bombay."

I ask in consequence of the Trustees having very recently removed their working account from this Bank (somewhat in temper, I think) because we have refused to continue allowing interest on it. Rs. 10 lákhs were withdrawn first and deposited in sums of Rs. 2 lákhs each with five of the Exchange Banks for 3 months at 2 per cent. interest per annum, and afterwards their working account to one or other of these Banks, a strange proceeding not only on the part of the Trustees, but of the Banks as well, seeing their coffers are overflowing and the Bank of Bombay is willing to lend them as much as they may require at the same rate, *viz.*, 2 per cent.

It has always been a principle of this Bank, like the other Presidency Banks, not to allow interest on current deposit accounts, but in the past few years while money was so dear, this Bank under strong pressure from the Trustees agreed to allow 2 per cent. interest on the daily balance, but discontinued doing so on the 1st January instant. We were driven to this step by the present condition of the money market which makes it impossible for this Bank to allow interest at 2 per cent. on such an account without incurring loss.

The withdrawal of the account is really no loss to us at present beyond that of prestige and the prospect of its again becoming useful, but what I deprecate is that the Trustees should have tried to force our hand in the matter by action, which I feel sure the Government of India never intended, they should have the power to exercise. I have perused the Port Trust Act and find no provision as to where they shall keep their banking account, but I do not hesitate to believe that Government intended the account should be kept with the Presidency Bank and that Government would object to the Trustees risking large amounts of public money with Banks not safeguarded as are the Presidency Banks.

I shall be obliged if you will tell me what you think of the matter and whether Government are likely to take notice of the Trustees' action.

I have, &c.,
(Signed) J. H. SLEIGH,
Secretary and Treasurer.

APPENDIX F.

No. 3408.

BOMBAY PORT TRUST.

To

THE SECRETARY TO GOVERNMENT,
Marine Department.

Bombay, 4th September 1891.

SIR,

I am directed to acknowledge the receipt of Government Resolution in the Marine Department, No. 135, dated 20th May, intimating that His Excellency the Governor in Council is of opinion that it is very desirable that the moneys of the Trust should be lodged with the Bank of Bombay, and that in this view the necessary provision will be made in the draft amendment of the Bombay Port Trust Act.

2. I am to express the Trustees' regret that this course should have been resolved on without affording the Board an opportunity of submitting a full statement of their views on the subject.

3. Act No. I. of 1873, under which the Bombay Port Trust was first incorporated, by not making it obligatory on the Trustees to deposit their moneys in the Bank of Bombay, vested a discretion in them to select the Bank or Banks in which such moneys should be deposited, and a reference to the discussions, hereinafter mentioned, which led to the same discretion being vested in them under the present Port Trust Act, will make it clear that this was done with the express approval of Government and with the intention of placing the Trustees in a position to use their moneys to the best advantage.

4. The Trustees perceived that a great loss was sustained from the revenue accumulations during the year being allowed to lie idle until the date of the annual payment of interest to Government.

5. Accordingly, as early as 11th November 1873, that is to say, about five months after the Trust came into existence, Government was requested to allow the interest on the Capital Account, which, by Section 50 of the Act of 1873, was payable as at present on 1st April of each year, to be paid into the Treasury in advance in sums of not less than Rs. 5,000 whenever the position of the Trust Funds was such as to allow of payments being made, and that in calculating the interest due to Government on Capital Account at the end of the financial year a reduction should be made at the rate charged to the Trust.

6. This proposal was submitted to the Government of India, but was not accepted. A suggestion was, however, made by that Government that the Trustees could easily advance money for works in progress for which they had to raise loans and by adjusting such advances by a loan on the last day of the year they would attain their object of saving interest.

7. This course has since been followed whenever practicable and has afforded some relief, but has not removed the whole difficulty, inasmuch as the revenue accumulations are ordinarily greatly in excess of the disbursements on works carried out by means of loans, and large sums must therefore still lie barren. For example, in the Estimates of the current year, the expenditure on loan works will amount to Rs. 3,33,000 only and the balance of revenue will, towards the close of the year, amount to about 16 lákhs, so that no interest would be earned on the difference of about 12½ lákhs. It was also found unadvisable to issue loans about the 31st March, the very height of the Bombay export season, when money is generally dearest.

8. A proposal was then made by the Trustees that power should be given them to invest their cash balances in public securities in order to obtain interest and with the approval of Government a clause allowing this to be done was introduced into the Draft of the present Port Trust Act (VI. of 1879).

9. The clause in question was, however, given up as the Bill was passing through the Legislative Council, because the Trustees, having to realize the investments on or before the 31st March in each year, ran the risk of losing

money if the rate at that date was unfavourable, *e.g.*, the Trustees might buy on 1st October at 100 and the rate at 31st March be only 96.

10. But I am to invite the attention of Government to the following words quoted from the speech made on the occasion before the Legislative Council by the Honourable Mr. Gibbs, who had charge of the Bill (Vol. XVIII, pp. 9-10, 1879, of Proceedings of Council).

"It was therefore thought unadvisable to oblige the Trustees to invest the money in Government paper, and having considered the matter very carefully it was thought better to leave it as it now stands in the 51st Section, which does not direct the Board to make any particular investment, excepting as regards the balance which may be in their hands on the 31st March. The balances, which will be in their hands during the financial year, are left unnoticed by this section and I think wisely. Should the Trustees find,* their moneys being all paid into the Government Treasury, that Government are inclined at any time to take moneys from them and allow them 4 per cent. on them, there is nothing in the Act which prevents the Trustees from so lending."

11. It is evident therefore that Government from the first recognised the importance to the Trustees of securing interest on their current deposits, and with this object left the Trustees free to make such arrangements in regard to the deposits as would be to the advantage of the Trust. In so doing Government was pursuing the policy that has always marked their attitude towards the Trust of allowing the Trustees the greatest freedom of action in regard to their affairs, and the Trustees would view with much regret a change that would deprive them of a discretion they have so long enjoyed.

12. When the Prince's Dock and other large works payable by loans were in progress, the balances were largely employed in the manner stated in para. 8, but with the completion of such works the balances again became large, and in 1883 the Trustees considered that some arrangement should be made in regard to them. It seemed to the Trustees that a Bank that had the use of their moneys should, as customary, allow interest and having the diseretionary power to lodge their moneys with any Bank, they addressed the Bank of Bombay on the subject, with the result that an offer made by the Bank of 2 per cent. on the minimum *monthly* balance was accepted. The Trustees continued to bank there under this arrangement until December last. A notice was on 19th December received from the Bank that no interest would be allowed after the end of that month.

13. The demand for money and the rates of interest on loans have recently been extraordinarily low and the Bank of Bombay has probably not been able to make as good use of the deposits as hitherto. But it has to be remembered that there have been times when high rates of interest were obtained by Banks (in March 1890 the rate was as high as 12 per cent.) and the annual mean rate of interest in 1889 (*vide* Appendix A) was 6·728 per cent. and in 1890 was 6·300 per cent. Had the Trustees participated in the profits of the Bank when the rates were high they would not now have so much ground for complaint at the payment of interest being stopped when the rates are abnormally low. The Trustees, however, received from the Bank of Bombay only 2 per cent. on the minimum monthly balance, being a less rate of interest than is uniformly given by other Banks in Bombay on current deposits, whereas the Exchange Banks, notwithstanding the depressed state of the money market, are still allowing ther customary interest of 2 per cent. on the minimum *daily* balance, and in the oipinion of the Trustees it is not reasonable for any Bank to urge that taking one year with another it could not afford to pay 2 per cent. on the minimum monthly balance. The Trustees do not, however, wish to imply that the Bank of Bombay had not perfect right if they so chose to discontinue the arrangement, but, on the other hand, the Trustees were bound to see that a proper return was received for the use of their moneys. Their balances were therefore transferred to the Exchange Banks noted in the margin at the more favourable rate of 2 per cent. interest on the minimum *daily* balance; and having regard to the following information as to the stability of the Exchange Banks referred to and to the conditions under which the Trust Funds are lodged in them, Government will see that the arrangement was a prudent one.

Hongkong and Shanghai Bank.
Chartered Mercantile Bank.
Chartered Bank.
New Oriental Bank.
Agra Bank.
National Bank.

* In the event of Government agreeing to receive Port Trust moneys and to allow intrest on them, such moneys would, of course, have to be paid into the Government Treasury.

14. In Appendix B the Capital and Reserve Funds of the Presidency and the Exchange Banks are compared. The figures noted in the margin are extracted therefrom in order to show at a glance that the Exchange Banks with which the Trust Funds are lodged, excepting one, have each a larger Capital and excepting three, have each a larger Reserve than the Presidency Bank of Bombay, and that the Hongkong and Shanghai Bank, which at present has the largest share of the Trustees' deposits, alone possesses a Capital and Reserve exceeding the Capital Reserve of the three Presidency Banks put together, and in addition has a Marine Insurance Fund of 250,000 dollars, which is a Reserve in another form and the Reserve liability of the Proprietors amounts to 10,000,000 dollars.

Banks.	In Rupees.		Total.
	Paid up Capital.	Reserve.	
	Rs.	Rs.	Rs.
Bank of Bengal	2,00,00,000	47,00,000	2,47,00,000
Do. Madras	50,00,000	14,00,000	64,00,000
Do. Bombay	1,00,00,000	33,50,000	1,33,50,000
Total 3 Presidency Banks ...	3,50,00,000	94,50,000	4,44,50,000
Exchange Banks.			
Hongkong and Shanghai* ...	2,62,49,420	2,32,16,037	*4,94,65,457
Agra Bank, Limited	1,41,17,650	22,73,011	1,63,90,661
Chartered Bank	1,12,94,120	48,72,070	1,61,66,190
Chartered Mercantile Bank ...	1,05,88,238	38,25,926	1,44,14,164
National Bank	65,85,883	18,33,006	84,18,889
New Oriental Bank Corporation, Limited.	1,32,01,413	30,40,291	1,62,41,704
Total 6 Excharge Banks... ...	8,20,36,724	3,90,60,341	12,10,97,065

* Reserve liability of Proprietors ... ... $ 10,000,000
Marine Insurance Fund ... ... $ 250,000

15. I am to point out that the whole of the Capital and Reserve Funds of any of the Banks holding the Trust moneys would need to be swept away before depositors would suffer.

16. By arranging as the Trustees have done for the distribution of their Funds over six Banks a greater amount of security has been obtained than if one Bank alone had all the funds; and although the Bank of Bombay is undoubtedly a good Bank, it must nevertheless be borne in mind that it has no immunity from loss and is not guaranteed by Government. It signifies nothing that the Exchange Banks lodge considerable sums of their own money in the Bank of Bombay, as the reason of this is that the Bankers' clearing house may be said to be at the Bank of Bombay, and it simplifies matters very much for the Exchange Banks to pay the balances against them by cheques, thus saving the transfer of actual cash or notes.

17. Moreover the status of a Bank is generally well known in business circles and no less than eight members of the Board of Trustees are representatives of the commercial community of the City of Bombay, and are in close touch with all matters connected with commerce and finance. Any information of occurrences affecting the stability of a Bank would therefore in all probability become known to them, and would at once be communicated to the responsible officers of the Board, so that the deposit in that Bank might, if necessary, instantly be withdrawn or reduced.

18. With this object in view a statement showing the amount in deposit in each Bank is weekly submitted to the Trustees at their meetings.

19. The risk of loss from the failure of a Bank is, however, very small, as such failures are extremely rare, and the depositors having a first claim on the assets are likely eventually to be paid. During the 18 years' existence of the Trust there has only been one failure amongst the class of Banks with which Port Trust money would be lodged, and in that case the depositors were paid 19*s.* 3*d.* in the pound. But assuming, for the sake of argument, that a Bank failed every 18 years, that it had a sixth part of the Trustees' current deposit, that the Trustees were unable to withdraw the money before the collapse, and that every pie was lost of a deposit of, say, 2 lákhs (a large sum to allow) the present arrangement, even in such extremely unlikely and adverse circumstances, would nevertheless be more profitable than an arrangement under which no interest was received, because against a loss of 2 lákhs there would be a gain in interest of more than twice that amount.

20. I am also to invite the attention of Government to the fact that in Crown Colonies in the East, that is to say, in Hongkong, the Straits Settlements, Ceylon and Mauritius, the moneys of the Governments of those places are deposited with some of the very Banks that in Bombay hold the Trust Funds. In Hongkong, for example, the Hongkong and Shanghai Bank holds the moneys of the Government of that Colony, and is allowed to issue notes; and in the Straits Settlements, Mauritius and Ceylon, the moneys of Government are held by the Chartered Bank of India, Australia and China, the Chartered Mercantile Bank of India, London and China, and the New Oriental Bank Corporation, and in one case at least that has come to the notice of the Trustees such moneys have been lodged not on current but on fixed deposit. If these Banks are considered sufficiently safe for the deposit of the moneys of H. M.'s Government, then surely the Trustees' moneys may also be safely placed in them.

21. The Trustees have also information that in Britain important public bodies like the Trust bank with private Banks and that in Singapore, presumably with the approval of the Government of that Colony, the Municipality has a current account with one of these Banks and also a fixed deposit of $ 110,000.

22. It is estimated from the experience of the six months during which the present arrangements have been in force that instead of Rs. 15,000 provided in the Budget, a sum of Rs. 20,000 at least will accrue to the Trust this year in the shape of interest on current deposits.

23. Government will remember that the Trust Revenue in 1889-90 fell short of the required sum by Rs. 85,536. In the year just ended (1890-91) the deficit is about Rs. 49,000, and from next year Rs. 90,000 will annually have to be provided on account of the Sinking Fund of the Victoria Dock Loan.

24. The Trustees are not disposed to take a gloomy view of the future, but they consider it in the highest degree unadvisable that they should at this time be dispossessed of any income now accruing to them as it would be tantamount to increasing by so much the taxation of the trade of the Port.

25. On the receipt of the Government Resolution, which is the subject of this letter, the Trustees asked the authorities of the Bank of Bombay whether they were now prepared to return to the old arrangement under which interest was allowed by the Bank on the Trustees' deposits, and their reply was in the negative.

26. For Government to deprive the Trustees of the discretionary powers in regard to their banking account, that from the first institution of the Trust were deliberately allowed them, and to make it compulsory for the moneys of the Trust to be lodged with the Bank of Bombay would, by placing the Trust at the mercy of the Bank, sacrifice the interest of the Trust for the benefit of the shareholders of the Bank, and the Trustees are in duty bound to protest against an amendment of the law that would have this result.

27. I am to state that the Trustees are satisfied that Government have their interests as much at heart as the interests of the Bank of Bombay, that the Trustees are willing to consider proposals for their moneys to be deposited as hitherto in that Bank provided a reasonable rate of interest is paid, but if that is not feasible they would ask that Government will either permit the present arrangement to stand or will consider whether there are not other courses open for the employment of the Trustees' moneys in a manner that will be satisfactory to Government and profitable to the Trust, and I am to submit the following proposals for the consideration of Government, *viz* :—

(*a*) that Government will grant an abatement of interest on payments made quarterly in advance on account of the interest on the Capital Debt due to Government; and,

(*b*) give the Trustees power to lend money to Banks or other parties on Government paper or other public securities.

I have the honor to be,

Sir,

Your most obedient Servant,

(Signed) F. G. DUMAYNE.

Secretary.

BOMBAY PORT TRUST.

APPENDIX A.

Averages of Minimum Rate of Interest.

	Banks of		
	England.	Bombay.	Bengal.
	Per cent.	Per cent.	Per cent.
July 1 to December 31, 1887	3·467	3·728	3·800
January 1 to June 30, 1888	2·638	5·890	5·730
July 1 to December 31, 1888	3·962	5·516	5·180
January 1 to June 30, 1889	3·097	9·447	9·309
July 1 to December 31, 1889	4·108	4·010	4·674
January 1 to June 30, 1890	4·254	9·210	8·276
July 1 to December 31, 1890	4·788	3·391	3·321
Mean 3½ years ...	3·759	5·885	5·756
Rates during 1891.			
January 1 to February 25	...	3	...
February 26 to March 4	...	4	...
March 5 to April 22	...	5	...
April 23 to June 17	...	4	...
June 18 to July 29	...	3	...
July 30 to date	...	2	...
Bombay Annual mean, 1889	...	6·728	...
Do. do. 1890	...	6·300	...

APPENDIX B.

Capital and Reserve of the Presidency and Exchange Bank compared.

Banks.	In Rupees.			In Sterling.			Total Assets.	Paid up per share.	Market value.		Dividends paid per cent.							
	Paid up Capital.	Reserve.	Total.	Paid up Capital.	Reserve dividend and undivided profits.	Capital and Reserve.			Per share.	Of the entire paid up Capital.	1883.	1884.	1885.	1886.	1887.	1888.	1889.	1890.
	Rs.	Rs.	Rs.	£	£	£	Rs.	Rs.	Rs.	Rs.								
Bank of Bengal	2,00,00,000	47,00,000	2,47,00,000	1,416,800	332,901	1,749,701	12,09,30,610	500	1,000	4,00,00,000	9½	9½	9½	10	10	10	10	9½
„ Madras	50,00,000	14,00,000	64,00,000	354,200	99,162	453,362	3,90,97,612	500	890	89,00,000	6½	7	7	8	11	10	14	10½
„ Bombay	1,00,00,000	33,50,000	1,33,50,000	708,400	237,281	945,681	6,46,65,757	500	960	1,92,00,000	7½	7½	7½	9	10½	11½	10	10
Total 3 Presidency Banks ...	3,50,00,000	94,50,000	4,44,50,000	2,479,400	669,344	2,148,744	22,46,93,979			6,81,00,000								
Exchange Banks.							£	£	£	£								
Hongkong and Shanghai...	2,62,49,420	2,32,16,037	4,94,65,457	1,859,335	1,644,469	3,503,804	29,937,295	28⅛	59	4,050,000	17½	17½	17½	15	16	16	18	26
Agra Bank, Ld.	1,41,17,650	22,73,011	1,63,90,661	1,000,000	161,005	1,161,005	6,992,789	10	8¾	875,000	5½	5½	5½	4½	4½	4½	5	5
Chartered Bank	1,12,94,120	48,72,070	1,61,66,190	800,000	345,105	1,145,105	15,923,197	20	27	1,080,000	7	7	7	7	7	7	8	8
Chartered Mercantile Bank	1,05,88,238	38,25,926	1,44,14,164	750,000	271,003	1,021,003	10,593,188	25	23	690,000	5	5	5	4½	5	5	5	5
National Bank, Ld.	65,85,883	18,33,006	84,18,889	466,500	129,838	596,338	6,858,295	12½	14½	541,150	5	5	5	5	5	5	5	5½
New Oriental Bank Corporation, Ld. ...	1,32,01,413	30,40,291	1,62,41,704	935,100	215,354	1,150,454	10,573,541	10	11	1,028,600	...	2½	5	5	6	6	6	6
Total 6 Exchange Banks ...	8,20,36,724	3,90,60,341	12,10,97,065	5,810,935	2,766,774	8,557,709	80,878,305			8,264,750								

N.B.—The returns (in Sterling) of the Exchange Banks to 31st December 1890 are taken from the Supplement to the *Economist* of May 23rd, 1891. The Rupee has been taken at 1*s*. 5*d*.

APPENDIX G.

No. $\frac{O. A.}{20644}$

FROM

THE ACCOUNTANT GENERAL,

Bombay;

To

THE SECRETARY TO GOVERNMENT,

Marine Department, Bombay,

OUTSIDE AUDIT DEPARTMENT.

Dated Bombay, 30th September 1891.

SIR,

I have the honour to offer the following remarks on the letter from the Secretary, Bombay Port Trust, forwarded for report, with Government memorandum No. 99 P. T., dated the 11th September 1891, herewith returned.

2. Government is aware that a question of a somewhat similar nature has been discussed with regard to the placing of the funds of the Bombay Municipal Corporation in current deposit with Exchange Banks. But the cases differ especially in these respects. The legislation desired by the Corporation would have the effect of *extending* its financial powers, whereas the legislation proposed by Government would *restrict* the financial powers at present exercised by the Port Trust; and this, although it is contended that the Port Trust as a body naturally possesses such mercantile experience, opportunities and aptitude as to make it more capable than the Municipal Corporation of successfully managing its financial operations. On the other hand, the direct and indirect interest of Government in the stability of the Port Fund is greater than in that of the Municipal funds, and the very circumstances that tend to qualify, may also be found to occasionally prejudice, the Port Trust as administrators or critics of monetary affairs. It is evident then that this case should be considered solely on its own merits, and without reference to the arguments used or decisions arrived at in the other.

3. The intentions of Government in 1872 (when the Trust was first incorporated) and in 1879 (when the Act was amended) on the particular question discussed, may, after the lapse of so long a time, be regarded as a subject on which opinions may differ; but in forming an opinion it is desirable to consider the proceedings of the Legislative Council meetings at which the original Bill and subsequent amendments were discussed. At the first reading of the Bill in 1872 the Honourable Colonel Kennedy made a clear statement why it was imperative that an effective Government control should be retained, and the Honourable Mr. Bythell (a non-official member of the Council) said he "thought that while very full power of action should be given to the Trust in all that pertained to the management of the Harbour, Government ought to be able to step in at any time, if they consider it necessary to do so." It appears to have been laid down clearly, and accepted as a first principle, that there must be Government control and power of interference. This opinion is confirmed by the action of Government, as soon as the Act came into force, in directing that the revenue earned subsequent to 20th June 1873 should be paid into a separate account with the Bank of Bombay, notwithstanding that the Act did not empower the Government to decide where the Trustees should bank. This order, moreover, the Trustees appear to have acted on, without question, for 18 years.

Government Resolution, Public Works Department, No. 60-H-307, dated 10th July 1873.

4. Further, as regards the question of the intention of Government, as it may be gathered from the statements made by the Honourable Mr. Gibbs in 1879, it seems quite evident that the point then discussed was not the ordinary

banking of gross income in current account, against which the Trustees may draw cheques to meet current charges. The Honourable member's words, quoted in the last sentence of paragraph 10 of the letter from the Secretary to the Port Trust, now under consideration, seem to point to the inference that he was then under the erroneous impression that all the Trust moneys would, as a matter of course, be paid into the Government treasury in the Bank of Bombay. But, however, that may have been, the speaker was obviously anticipating occasions when the Trustees would occasionally have an accumulation of funds, much in excess of a working balance; and, being aware that the ordinary banking account was not earning intrest, he appears to have considered whether this casual surplus should not be temporarily employed to earn interest by *investment* in Government securities or by loan to Government until the money was required for payment in liquidation of an instalment of debt or as interest on loans, &c. As it was not found possible to lay down a rule to that end, the idea of compelling the Trustees to put out, at interest, or *invest*, their temporary monthly surplus was abandoned; but, it cannot thence be fairly inferred that the Honourable Mr. Gibbs intended complete discretion to be thereby accorded to the Trustees in the matter of investing the monthly balances and the gross earnings from day to day. As, however, it was found possible to bind the Trustees by a specific rule in respect to the balance remaining on 31st March of each year, Section 51 of the Act was passed.

5. Another point to be borne in mind is that the clauses in the Act which restrict the powers of the Trustees and secure to Government certain powers of control could only have been intended to deal with such matters as were at the time considered to be material or important. It could not have been intended thereby to limit absolutely by the law the authority of Government to interfere, should they consider it necessary to do so.

See Sections 11, 19 (3), 39, 40, 43, 60, 74, &c., &c.

6. I conclude, therefore, that it is incorrect to assume that, by not obliging the Trustees by a specific provision in the Act to deposit their moneys in the Bank of Bombay, Government *vested* a discretion in them to bank where they liked. To 'vest' is a positive act specifically conferring an immediate fixed right, and can hardly, I submit, be held to arise out of a mere omission to prohibit or restrain.

7. The Trust is an off-shoot or a department of the Government just as district local boards are, and, like these incorporated bodies and the Provincial Government, the Trustees must often have large balances unemployed, *i.e.*, not earning interest. This is a condition generally inseparable from the constitution of a public trust with delegated powers, and one that must frequently occur, even in the case of banks and financial houses. It could never have been intended that public trustees should be held responsible for seeing that their balances are always in active employment by a method which would practically involve a certain amount of speculation on the relative stability of various banks.

8. It is not necessary, I think, to consider at large the question discussed in paragraph 14 of the Secretary's letter, nor is it even possible to compare the Exchange Banks, in respect to stability with the Bank of Bombay. The Exchange Banks have their head offices in London with branches almost all the world over, and the character of the business that may be taken up by them is comparatively unrestricted. Nothing is, or can be known, in Bombay of the working of the branches until results are declared by the head office; and while it is happily true that bank failures are exceptional, heavy losses are not unfrequently reported. It must, moreover, depend very much upon the circumstances of the time whether a Trustee having information affecting the stability of an Exchange Bank would feel himself bound to communicate it to the officers of the Board. He might even be keenly, though perhaps unconsciously, interested in withholding such information. The Bank of Bombay, as the Government Bank, has no immunity from loss and it has not been guaranteed; but its charter has so limited the extent, nature, and sphere of its operations, that the risk of loss is reduced to a minimum. Moreover, a constant watch is maintained by the Accountant General over the Presidency Bank's

transactions and balances. All these safeguards are of the greatest value and enable the Government to entrust the bank with balances of from 20 to 50 lákhs of Rupees without interest on any portion of the amount.

9. The circumstance that a Crown Colony banks with one of the Exchange Banks is not of itself a reason why the Government of Bombay should allow its trust funds to be withdrawn from a local bank, that is under daily observation, on behalf of Government and allow the money to be placed with a Bank about which the Government is not in a position to obtain the latest and reliable information, nor can the action of the Crown Colony be profitably discussed without information as to the extent of confidence placed in the Bank, or the particular means whereby the safety of the public funds is ensured.

10. I can hardly admit the validity of the argument advanced in paragraph 19 of the letter under reference. It assumes that the interest (revenue) would be perpetually accumulating to cover a possible failure at the end of 18 years. No allowance is made for what I might term charges for working expenses on the capital of 2 lákhs, and it seems nothing short of a fallacy to premise that interest earned and spent during 18 years, even though it is more than the capital lost, is a 'gain.' But, assuming that the Trustees have earned Rs. 20,000 each year (para. 22) for 18 years, the interest would amount to Rs. 3,60,000. If we deduct the anticipated loss of 2 lákhs, the net gain of Rs. 1,60,000 would give an annual average return of Rs. 8,888, a comparatively insignificant set-off against the additional amount of anxiety and responsibility with which the proposals of the Trustees are fraught, and which Government never intended the Trustees to assume.

11. In respect to the proposals in paragraph 27, to which my attention is particularly drawn, I venture to question the financial expediency of regarding interest on balances as a material item in framing a budget. The amount expected must, of course, be entered in the estimates, but, reliance for a surplus or at least an equilibrium should rather be placed on the revenue from the docks, wharves, bandars and other property on which capital has been spent, the expenditure being regulated according to this income.

See paragraphs 22 and 23.

12. Proposal (*a*) is similar to the proposal referred to in paragraphs 5 and 6 of the Secretary's letter, which the Government of India negatived in 1874. No reasons were then given for this refusal. The objection of the Government of India may possibly have been rather to the minimum amount mentioned (Rs. 5,000) than to the general principle of permitting payments of interest in advance; and if on a further representation the Government of India are inclined to reconsider their previous decision, I see no objection to accepting the suggestion of the Port Trust in this respect. Proposal (*b*) is altogether foreign to the object for which the Trust was created. It would doubtless be objected to as being an undue interference with the business of banks and other mercantile houses, and as placing a manifestly dangerous power in the hands of the Trustees.

Government of India, Financial Department, No. 21-82, dated 3rd March 1874.

13. In conclusion, I may add that whatever may have been the intentions of Government in 1872—79, I am respectfully of opinion that the present proposal, that the Trustees should be restrained from banking with any other than the Bank of Bombay, is one that should be carried out in the interests of the Government and the public, as well as in the interests of the Trustees themselves, who should not be asked or allowed to undertake excessive responsibilities or anxieties in respect to the safe custody of public funds entrusted to them. If Government sympathise with the Trustees in their desire to find temporarily remunerative employment for their current balances, and if insuperable objections are raised to the first of the two alternative proposals made in the last paragraph of the letter under report, I am inclined to believe that, in consultation with the Bank of Bombay, a means might be found to the end desired without empowering the Trust either to bank with, or to lend money to, Banks, or other parties according to its own unfettered discretion.

I have, &c.,

(Signed) G. H. R. HART,
Officiating Accountant General.

VI.

Section 10.—Contribution by the Port Trustees towards the cost of Harbour and Dock Police, and Medical services in the Port.

The proposed enactment as to Harbour Police has become necessary under the following circumstances.

2. Government, in reviewing the Annual Report on the working of the Police in the Town and Island of Bombay for the year 1884, expressed* the opinion that "a portion of the cost of the Harbour Police should be defrayed by the Port Trust. No "doubt the Harbour Police is employed to a considerable extent on duties with which the Port Trustees have no concern, such as the prevention of smuggling, of importation of slaves and arms and so on. But they also help to keep order on board ship, bring refractory seamen on shore, &c., and these are duties for which the Trustees, who levy fees on all ships, entering the Harbour, may fairly be required to pay."

* Government Resolution, Judicial Department, No. 7597, dated 4th November 1885, part 11.

3. The Port Trustees were accordingly invited to bear a moiety of the cost of the Harbour Police. In reply† they pointed out "that under the new Municipal Bill, it is proposed to include the Harbour in the City of Bombay, and to bring it under the control of the Municipality, Section 3 (1) of the Bill; that Section 63 of the same Bill provides that the Town Council shall pay to Government from the Municipal Fund such proportion of the annual expenses of the Police of the city (in which it is proposed to include the Harbour) as Government shall from time to time determine; that seeing Government have, no doubt for good reason, maintained the Harbour Police until the present time, the Trustees would respectfully request that they will continue to do so until the relationship of the Municipality to the Harbour be determined.

† Letter No. 440, dated 5th February 1886.

4. The following Resolution was then issued (Judicial Department, No. 1238, dated 24th February 1886):—

"The Trustees take no objection to the proposal on its merits, but suggest that it is undesirable to press any claim against them now, because the Harbour may possibly, when the new Municipal Bill is passed, be placed under the charge of the Municipality, and the claim of Government will then be, not against the Port Trust, but against the Corporation. But it is clear that the Corporation will be much more likely to resist the claim, and with much greater show of reason, if it has never been pressed against the Port Trustees. The Governor in Council will not make any demand for the current financial year,

but he considers that the Port Trustees should bear half the cost of the Harbour Police from 1st April next, and so long as the Harbour remains under their authority."

On receipt of this Resolution, the Port Trustees paid the amount of their contribution for the year 1886.

* Government Resolution No. 175, dated 1st June 1889.

5. In March 1889, it was brought* to notice that the Trustees had made no provision in their estimates for 1889-90, on account of the cost of the Harbour Police on the ground that under the new Municipal Act, the charge would fall to be arranged between Government and the Municipality. Government thereupon ruled that the arrangement made by which the Trustees bore a moiety of the cost of the Harbour Police was an eminently fair one and should be adhered to.

6. The matter was subsequently considered in the Judicial Department, and a reference having been made by that Department to the Honourable the Advocate General for his opinion, as to the liability of the Port Trustees to pay a share of the cost of the maintenance of the Harbour Police since the Municipal Act, 1888, came into force, that officer advised as follows :—

"If I understand the facts of the case rightly, there is no point of law in it. I cannot find that the Port Trustees are, or ever were, under any legal liability to pay any share of the cost of maintenance of the Harbour Police, as I cannot discover any provision in the Port Trust Acts under which they are, or were, so liable. But the Port Trustees appear to have agreed to contribute half the cost of the Harbour Police, no doubt considering that it was to their advantage to do so, and secure the efficiency of such Police. The same consideration will, I suppose, influence them now. But as since the passing of the Municipal Act of 1888, the Harbour is clearly included within Municipal limits, and as Government has, under Section 62 (*a*) of the Act, power to determine what proportion of the annual expenses of the Police of the city the Corporation shall pay, it is practically a question for the discretion of Government how to apportion the cost of the Harbour Police, between itself, the Corporation and the Port Trustees. Still as regards the Port Trustees, this must be a matter of agreement; and if they refuse to contribute to the cost, the only remedy of Government is to decline to supply an efficient Harbour Police."

† Letter No. 11409, dated 2nd September 1890.

7. The Municipal Commissioner for the City of Bombay, to whom a reference was also made, reported† that, under the Municipal Acts of 1872 and 1878, Section 137, the obligation on the Municipality in respect to Police charges was wider than it is at present; that the Corporation was bound to defray "*the whole* or a proportion of the charges *of every description* of the Police," and that under Section 62 (*a*) of the existing Act, the obligation extended in no case to the whole, but only to "such proportion of

the annual expenses of the Police of the City, as Government shall from time to time determine." The Municipal Commissioner pointed out that the Harbour, which the Port Trustees considered to be, for the first time, included within the City of Bombay, was an integral part of it before the passing of the Act of 1888, and he observed that so far, therefore, as their claim was based upon a supposed change in the limits of the city, there was no ground for it, and that these limits had not been changed, but were the same as they had been during all the years in which their share of the cost of the Harbour Police had been paid by the Port Trustees. The Municipal Commissioner observed further that the Harbour was as free from the general tax then as it was from the consolidated rate under the old Acts, and that the Municipality derived no revenue from it; and he added that Government having decided that the cost of the Dock Police was an item of working expenses, he failed to see on what grounds, if the cost of the Dock Police was included among working expenses, the cost of the Harbour Police could possibly be excluded from them.

8. The following orders were thereupon passed (Government Resolution, Judicial Department, No. 110, dated 9th January 1891):—

> RESOLUTION.—A copy of the Advocate General's opinion should be forwarded to the Marine Department, and that Department requested to inform the Port Trustees that the legal situation is unchanged since the arrangement was made by which they bore a moiety of the cost of the Harbour Police, and that as representing the chief beneficiaries by the existence of the Harbour Police, they are, apart from law and legislation, morally as liable now for half the cost of the Harbour Police as before the passing of Bombay Act III of 1888. The arrangements established by Government Resolution (Judicial Department), No. 2379, dated the 21st April 1887, and Government Resolution (Financial Department), No. 2252, dated the 10th June 1889, must be adhered to, and the Port Trustees should now be requested to pay the arrear contributions due under them.

9. This Resolution led to a further representation from the Port Trustees against any part of the cost of the Harbour Police being imposed on the Trust. This representation was considered in the Judicial Department, and the Honourable Sir R. West, in minuting on the papers, observed as follows:—

* *. "It seems quite fair that the shipping and commerce of Bombay, which are specially benefited by the Harbour Police, should contribute in a special degree towards the support of the Police, and a contribution of a moiety of the cost was fixed on four years ago as reasonable. That the Harbour Police may or may not admit of reduction is from this point of view irrelevant. The Port Trust as representatives of the shipping and having the means at hand of re-couping itself, ought to pay half the necessary Police charges.

"The means of compelling such a contribution do not, at present, exist, but Government ought to have them at command."

* * * *

Provision was accordingly made in the Bill to amend the Bombay Port Trust Act to enable Government to call for a contribution from the Port Trustees towards defraying the cost* of the Harbour Police.

* NOTE.—Under an arrangement come to with the Port Trust and which will remain in force till the end of 1893-94, the sum of Rs. 27,750 is paid annually by the Trust to Government on account of the Harbour and Dock Police, (Government Resolution, Judicial Department, No. 392, dated 18th January 1893.)

10. The section of the Bill under reference also gives Government power to demand payment from the Port Trustees of the cost of the Police employed on their docks, warehouses and other property. The Port Trustees formerly paid the whole cost of this Police, but they explained that their payment of this charge was legal only, owing to the fact that the force had been regularly budgetted for and might thus be considered as included (as officers and servants of the Board) in the Schedule under Section 21 of the Bombay Port Trust Act, 1879.

It appeared, however, doubtful to Government whether the Dock Police, which is not subject to the regulations of the Board under Sections 22 and 23 of the Act, could legally be included as its officers and servants in the Schedule under Section 21, and to guard against any difficulty arising in future in this respect, and as it appeared unadvisable to rely on the continuance of a voluntary payment, the necessary provision was made, so as to cover payments on account of the Dock Police as well. Similar provision has also been made in the corresponding sections of the Bills to amend the Karáchi and Aden Port Trust Acts.

11. As to "Medical Services in the Port," the Port Trustees, Bombay, pay one-half of the salary of the Health Officer of the Port and of the cost of his establishment. A proposal was made that the Trustees should defray the whole of the expenses as the services of the Health Officer are given wholly to the floating population in the Harbour. The Trustees, however, did not acquiesce in this view, and suggested that Government and the Municipality should share between them half of the expenses.

The marginally noted Resolutions of Government in the General Department, which deal with the subject, are attached.

No. 1427, dated 14th April 1890.
No. 4223, dated 21st October 1890.
No. 1784, dated 21st May 1891.

Government Resolution, General Department, No. 1427, dated 14th April 1890 :—

RESOLUTION.—In Government Notification No. 1356, dated the 9th instant, Surgeon F. F. MacCartie has been appointed to be Health Officer of the Port of Bombay under Section 17 of the Indian Ports Act X of 1889. The Marine Department of the Secretariat should now be requested to ask the Port Trustees whether they are willing to pay the salary of that officer and the cost of his establishment in accordance with the provisions of Section 36 (5) (*a*) of that Act or whether they elect to collect and pay over to Government hospital port-dues at a rate to be settled by Government not being more than one anna per ton to be applied under Section 50 of the Act.

Government Resolution, General Department, No. 4223, dated 21st October 1890 :—

* * * * * *

Memorandum from the Marine Department of the Secretariat, No. 84-P.T., dated 9th August 1890—Transferring a letter No. 3261, dated 6th idem, from the Secretary, Bombay Port Trust, who submits his reply to Government Resolution No. 1427, dated 14th April 1890, in which the Trustees were asked whether they were willing to pay the salary of the Health Officer of the Port of Bombay and the cost of his establishment in accordance with the provisions of Section 36 (5) (*a*) of the Indian Ports Act or whether they elected to collect and pay over to Government hospital port dues at a rate to be settled by Government.

Letter from the Solicitor to Government, No. 989, dated 20th September 1890—Forwarding a copy of the accompanying memorandum* No. 80 of the same date from the Honourable the Advocate General.

Letter from the Accountant General, No. G.A. —20793, dated 6th October 1890.

RESOLUTION.—Bombay Harbour is a part of Bombay but the superintendence of it for sanitary purposes should be expressly assigned to the Health Officer of the Port appointed under Section 17 of the Indian Ports Act X of 1889. The Honourable the Advocate General has given it as his opinion that the Health Officer of the Port is not subordinated by law to the Executive Health Officer of the Municipality. The authority of the two officers is in a measure concurrent but their orders need not clash if reasonable discretion is exercised. The orders issued under the Indian Ports Act will apparently suffice for the harbour, and on shore the Executive Health Officer can do all that is possible under Bombay Act VI of 1867. There appears therefore to His Excellency the Governor in Council to be no necessity for constituting the Health Officer of the Port, Health Officer under Bombay Act VI of 1867. It will suffice if that officer is directed executively to lend his aid to the Executive Health Officer of the Municipality and to the Municipal Commissioner in their discharge of the functions officially assigned to them by the City of Bombay Municipal Act III of 1888.

2. The position and functions of the Health Officer under the Indian Ports Act X of 1889 being such as have been above indicated, it appears to Government that that officer exercises sanitary superintendence over the harbour and that his services are given wholly to the floating population in the harbour. They should therefore be paid for by the shipowners and others directly interested in the trade of the Port. The Port Trustees represent this class and they ought to provide the salary of the Health Officer and incidental charges of establishment, &c., in the way least onerous to those whose interests they represent. The expenditure if not otherwise provided may be defrayed out of hospital port dues to be levied under Section 49 of the Indian Ports Act X or 1889.

3. If the Bombay Municipality desires to take on itself the duty and the cost of looking after the sanitary arrangements of the port, it may make a proposal to that effect. The Port Trustees will no doubt be glad to be relieved of the burden, and Government will have no objection to furthering the wishes of the Corporation by appointing a medical officer paid by the Municipality to be Health Officer of the Port.

The opinion of the Honourable the Advocate General, quoted in paragraph 1 of the above Resolution, is as follows :—

"With reference to memorandum No. 3688 of 1890 (General Department), dated 12th September 1890, and its accompaniments, I am of opinion as follows upon the queries put to me:—

(*a*). I think that the rules in question having been published in the *Bombay Government Gazette* as purporting to have been made in exercise of the power conferred by Section 6 of the Indian Ports Act X of 1889, it must be taken as conclusively proved that the rules were duly made, see Act I of 1887, *Section* 6, Clause 5, and compare *Section* 4 (last clause) of the Indian Evidence Act I of 1872.

"The rules accordingly have, in my opinion, full legal validity, although the condition of 'previous publication' has not been complied with. At the same time there is nothing to prevent Government, if so disposed, from republishing the rules in accordance with the provision of Act I of 1887, *Section* 6, Sub-Clauses 1, 2, 3 and 4, and then finally promulgating them.

(*b*). I think that the Government of Bombay can appoint a Health Officer at the Port of Bombay under *Section* 17 of Act X of 1889, and such officer would, subject to the control of the Bombay Government, have the powers conferred by that section, but no other powers. I do not understand the reference in the query to '*Section* 50 of that Act' as *Section* 50 relates to hospital dues.

"A Health Officer so appointed would, in my opinion, be in no way a subordinate of the Municipality, and *Sections* 75 and 76 of Bombay (Municipal) Act III of 1888, and Section 2 of Bombay Act VI of 1867 would not apply to him. He would be quite a distinct officer (*a*) from the Executive Health Officer appointed under Bombay Act III of 1888 who by *Section* 76 of that Act is to be the Consulting Officer of Health for the purposes of Bombay Act VI of 1867, and (*b*) from the Health Officer of the Port appointed under Bombay Act VI of 1867 for the purposes of that Act. It is I think doubtful that the Executive Health Officer in the exercise of his functions as Consulting Officer of Health under Bombay Act VI of 1867 is subordinate to the Municipal Commissioner. But it is, at all events, in my opinion, clear that neither the last-named officer nor the Executive Health Officer can have any right of control over the Health Officer appointed under *Section* 17 of the Indian Ports Act X of 1889. I find nothing in *Sections* 421, &c., of Bombay (Municipal) Act III of 1888 inconsistent with this view. It is equally clear, on the other hand, that a Health Officer of the Port appointed under Bombay Act VI of 1867, for the purposes of that Act, is subordinate to the Executive Health Officer by the combined operation of *Section* 2 of that Act and *Sections* 75 and 76 of Bombay (Municipal) Act III of 1888."

Government Resolution, General Department, No. 1784, dated 21st May 1891:—

Letter from the Municipal Commissioner for the City of Bombay, No. 29068, dated 26th March 1891—Suggesting with reference to Government Resolution No. 4223, dated 21st October 1890, that the Health Officer of the Port of Bombay should be brought under the control of the Executive Health Officer, Bombay Municipality, and the Municipal Commissioner for the City of Bombay and that the Bombay Port Trust should pay one-half, and Government and the Municipality share between them the other half of the gross expenses of the appointment; and making remarks.

Memorandum from the Marine Department of the Secretariat, No. 41-P.T., dated 4th May 1891—Transferring the following letter No. 1722, dated 1st idem, from the Secretary, Bombay Port Trust :—

"In paragraph 2 of Government Resolution No. 4223, dated 21st October last, the opinion is expressed that the services of the Health Officer of the Port are given wholly to the floating population in the harbour, that they should therefore be paid for by ship-owners and others directly interested in the trade of the port and that the expenditure if not otherwise provided may be defrayed from hospital dues to be levied under Section 49 of the Indian Ports Act X of 1889.

"2. The Trustees have given this matter most careful consideration and I am directed to state that as representatives of the trade they are unable to accept the view taken in the Resolution of their responsibilities, as it seems to them that the duties of the Health Officer of the Port are certainly not confined to the floating population.

"3. They extend to the crowds of inland and foreign travellers whose passage through Bombay in no way adds to the Trust's income and the cost of protecting these travellers is a charge that fairly devolves on Government. They extend also to the protection of the City of Bombay from the importation of infectious disease, the responsibility for which devolves on the Municipality,

"4. Section 61 (*g*) of the Municipal Act is as follows:—

'It shall be incumbent on the Corporation to make adequate provision by any means or measures which it is lawfully competent to them to use or to take for each of the following matters, namely:—

* * * * *

measures for preventing and checking the spread of dangerous diseases.'

In the event therefore of there being no Port Health Officer, the Municipality would be bound to provide for the performance of that part of his duties that relates to the prevention of importation of disease by sea, and the duty thus imposed on the municipality by the section quoted is made the more binding because in return for the services to be rendered a considerable sum of money is yearly paid by the Trust to the Municipality in the shape of the general tax levied on the revenue of the docks or in other words on the revenue of the port, the docks being included in the port.

"5. The Trustees have some reason for doubting whether the Health Officer of the port, if only appointed under Section 17 of the Indian Ports Act X of 1889, has legal power with regard either to the quarantine arrangements or to the issue of Bills of Health, but however this may be, I am to urge that he may be appointed under Bombay Act VI of 1867 as Government apparently intended when they passed their Resolution (General Department) No. 2475, dated 16th July 1884. The Trustees attach much importance to this, as they cannot but think that the proposed arrangement under which one officer would act under Government and the other under the Municipality would prove unsatisfactory.

"6. With regard to the benefits that the shipping and trade of the port may be supposed to derive from the appointment of the Health Officer of the Port, I am directd to state that in the opinion of the Trustees such benefits have been most liberally recognized in the contributions that are being made by the Trust towards the cost of maintaining the Health Officer and his establishment and towards the European General Hospital.

"7. I am to invite the attention of Government to the fact that under the provisions of the Indian Ports Act (Section 49 (2)), the Trust's contribution to the hospital must be taken as a set-off to any claim under hospital port dues.

"8. I am to state that the Trustees are prepared to continue to pay one-half of the whole cost of the Port Health establishment, and seeing that their present contributions as shown by the account in the margin represent two-thirds of the whole outlay and are nearly double the highest hospital port dues leviable as above under the Act (*vide* paragraph 11 of my letter No. 3261, dated 6th August last), the Trustees hope that for the reasons hereinbefore given Government may be able to arrange with the municipality for the burden of the remaining charges to be shared between them."

Memorandum.

Port Health Office establishment	Rs. 17,959
Hospital grant	„ 10,587
	Rs. 28,546

Government share ½ of 17,959=8,979=31½ per cent.

Trust share ½	8,979
Hospital grant	10,587
	19,566=68½ per cent.

The maximum leviable under hospital dues allowing for exemptions under Section 49 (4) of the Indian Ports Act, is Rs. 10,058.

RESOLUTION.—The proposal, made by the Municipal Commissioner for the City of Bombay are to the effect that the Health Officer of the Port should be a Municipal Officer under the orders of the Municipal Commissioner and the Executive Health Officer of the Municipality,—in other words that he should be an Assistant Executive Health Officer having the harbour and shipping in his special charge—and that 50 per cent. of the expenses of the appointment should be defrayed by the Port Trust, 25 per cent. by the Municipality and 25 per cent. by Government. The Port Trustees have expressed their willingness to bear a moiety of the charges, and if the Municipality agree to bear the other half of the cost, Government will be glad to receive and consider any proposal for carrying out such a plan. The service is specially local and Government do not see why the general revenues should bear any part of the cost.

VII.

Section 12.—*Authorizing the supply by the Board of Water to the Shipping in the Port and the maintenance of means for extinguishing fires in the Port or on Port Trust property and empowering the Board to send their tugs to render assistance to vessels beyond three miles from the Port limits.*

This section of the Bill enables the Board to provide a supply of water to the shipping in the Port and to maintain the means of extinguishing fires in the Port or on the property of the Board. It further empowers the Board to send their tugs to render assistance to vessels outside the distance of three miles from the limits of the Port. The Port Trustees have always maintained water-boats and fire-engines for use; but as the law as it stands does not cover these duties the Port Trustees desire its amendment. Under the Municipal Act, 1888, the Municipality has power to provide a water-supply and maintain a fire-brigade for the whole of the City of Bombay, which includes the Port. A provision has therefore been added to the section which enables the Municipality, should they so determine, to perform such services in the Port as lie within the range of their statutory powers. The Municipal Commissioner for the City of Bombay has no objection to the proviso in question. Under Section 68 (3) of the Bombay Port Trust Act, the sending of tugs outside the distance of three miles from the limits of the Port of Bombay whether for the conduct of vessels outward bound or for bringing vessels into the harbour is not within the works or duties to be undertaken by the Board. The Port Trustees consider it desirable that this disability should be removed for although the duties of their tugs are ordinarily confined to harbour limits, occasions arise when in the interests of the shipping, a public body like the Trust should be in a position to send their tugs and other vessels beyond such limits. The necessary provision has accordingly been made in the section. In Section 7 of the Bill, provision has been made authorizing the Board to levy charges for the use of water-boats, &c., and for assistance rendered to vessels outside the Port.

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on 31 October, 2019

VIII.

Section 13.—*Recovery by the Board of damage caused through negligence on board a vessel which has a pilot on board.*

This amendment was suggested by the Port Trustees, Bombay, who addressed* Government as follows in October 1888 :—

"One or two serious accidents have occurred in recent months in connection with the docking of vessels at the wet docks. In one case, that of the Italian Steamer '*Bormida*', owing to a direct disobedience of the pilot's orders, the steamer having been moved full speed ahead instead of full speed astern as ordered, the bridge over the Victoria Dock Gates was seriously injured and has cost Rs. 1,778 to repair, and the wooden beam that protects the gates themselves was cut through. Had the bridge not broken the force of the shock there is little doubt that the gates themselves must have given way, when the dock would have been thrown out of use until new gates could be provided.

"2. Section 84 of the Port Trust Act gives the Trustees summary power to recover damages caused through the negligence of those on board, but it contains a proviso that 'no such warrant shall issue if the vessel was at the time under the orders of a duly authorized officer in the pilot service.'

"3. The Trustees are satisfied that no summary process should issue when the facts are obscure or are seriously disputed, but they do not think that the mere presence of a pilot on board should deprive them of the benefit of the simple procedure laid down in Section 84, and they accordingly submit for the favorable consideration of Government, that the following words drafted by the Honourable the Advocate General should be added to Section 84 of the Port Trust Act, 1879 'unless such damage be caused* by disobedience to (*or in no way attributable to) such orders.'

4. If this addition meets with the approval of Government, I am to ask that the necessary amendment of the Port Trust Act be made at the convenience of Government."

* Letter from the Secretary, Bombay Port Trust, No. 4484, dated 19th October 1888.

Similar provision has been made in the Bills to amend the Karáchi and Aden Port Trust Acts.